

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

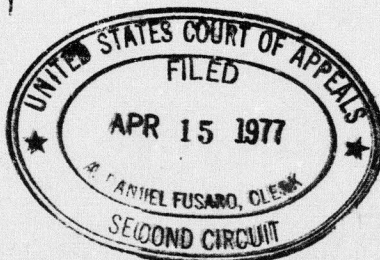
77-20241

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES ex rel. PERRY FORD,
Petitioner-Appellee,
-against-
JACK R. CZARNETZKY, Superintendent,
Eastern New York Correctional Facility,
Respondent-Appellant.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPENDIX



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Indictment No. 125/69

125/69

125/69

125/69 ✓

SUPREME COURT : BRONX COUNTY

TRIAL TERM : PART IX

THE PEOPLE OF THE STATE OF NEW YORK :

-against- :

PERRY FORD, :

Defendant. :

Sentence

Bronx, New York
February 3, 1970

BEFORE:

HON. FRANCIS J. BLOUSTEIN,

Justice.

FILED

MAR 18 1970

SUPREME COURT CLERK'S OFFICE
BRONX COUNTY

APPEARANCES:

For the People:

BURTON B. ROBERTS, ESQ.
District Attorney, Bronx County
BY: IRVIN GOLDSMITH, ESQ.
Assistant District Attorney

For the Defendant:

NOAH BRAUNSTEIN, ESQ.

Thomas J. Landers, C.S.R.
Official Court Reporter

COURT CLERK: On Indictment No. 188 of '69 and 189 of '69 and 186 of '69 and 187 of '69, Perry Ford, is that your name?

THE DEFENDANT: Yes, it is.

COURT CLERK: Is the gentleman standing alongside of you, Noah Braunstein, your attorney?

THE DEFENDANT: Yes.

COURT CLERK: You are indicted--you're now facing sentence for--your plea of guilty to robbery in the first degree to Indictment 188 of '69 which plea also covers Indictments No. 187 of '69 and 186 of '69. And also your plea of guilty under Indictment No. 186 of '69 to manslaughter in the first degree which said plea is to cover Indictment No. 187 and 189 of '69.

Have you any legal cause why judgment of the Court should not now be pronounced against you?

MR. BRAUNSTEIN: If Your Honor please--

COURT CLERK: Just a moment, I must have the defendant answer personally. Is there any legal reason why judgment of the Court should not now be pronounced upon you on those two pleas?

THE DEFENDANT: Yes, there is.

COURT CLERK: All right. If you have anything to say on your behalf before judgment is so pronounced you may

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do so now. You may speak for yourself or your attorney may do so for you.

MR. BRAUNSTEIN: If Your Honor pleases, we've had reasons set forth on the record by this defendant when he was originally on for sentence. We had the reasons set forth on October 31. In fact, Your Honor called to the attention of this defendant on the original day of sentence that he stated to the probation officer that he was not guilty of this crime of--upon which--the facts set forth in the indictment to which he took a plea of manslaughter in the first degree.

Subsequently, he made a statement on October 31, 1969, in which he said that he was coerced into the plea in that if he didn't help out, he was threatened that he was going--the District Attorney threatened to prosecute the witnesses if he didn't help out. He threatened he was going to take his child.

Now, those are the only reasons that I can submit that are a part of the record and certain other things have been stated to me by the defendant which I don't think are legal causes and what he has stated I can't state because those are privileged communications.

So I think under the circumstances, instead of adjourning it and moving it back and forth, I think that it's

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best in the interests of justice and the interest of this defendant that he have a hearing to determine whether or not there was any such coercion or whether or not there should be an acceptance of his plea at this time or a withdrawal of his plea.

THE COURT: All right, I remember this case quite well, having presided at the trial of this action which lasted for four days before this defendant interrupted the trial of the action and asked through his counsel to withdraw his plea of not guilty to the crime of murder and plead guilty to the crime of manslaughter in the first degree on one indictment and guilty on robbery and related crimes with respect to another indictment.

When I got the probation report, apparently, this defendant had told the investigator he was not guilty of the crimes, and under the authority of People v. Beasley, I'm going to conduct a hearing in this matter. The Beasley case having been decided by the Court of Appeals on December 10, 1969. I'll conduct a hearing in that case to determine whether or not, in my discretion, I should permit this defendant to withdraw his plea of guilty to two of the indictments, one in which he pleaded to manslaughter in the first degree and the other to robbery in the first degree and related crimes.

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All right, you may proceed, Mr. Braunstein. You have the burden of proof.

MR. BRAUNSTEIN: Do you want to take the stand.

THE DEFENDANT: Yes.

MR. BRAUNSTEIN: Before we proceed, may I--inasmuch as this is an assigned case, if Your Honor please, may we have Your Honor direct the reporter to furnish me with a copy of the minutes of these proceedings since we opened here this morning.

THE COURT: So ordered.

MR. BRAUNSTEIN: Thank you.

COURT CLERK: This is on Indictment 186 of '69, plea of manslaughter in the first degree, also covers 187, 189 of '69.

THE COURT: This will be on Indictment 186 of '69 and 188 of '69.

COURT CLERK: 187, Judge.

THE COURT: No, 187 and 188 will be taken into consideration at the time of sentence. Swear the witness.

P E R R Y F O R D, residing at 1222 Boston Road, Bronx, New York, called as a witness by and on his own behalf, having been first duly sworn, was examined and testified as follows:

THE COURT: Proceed.

DIRECT EXAMINATION

BY MR. BRAGNSTEIN:

Q Perry Ford, would you keep your voice up, please, so we can hear you. A Yes, I will.

Q Do you recall appearing here in this Court on September 17, 1969? A Yes, I do.

Q And do you recall taking a plea on that day in the middle of a trial? A Yes, I do.

Q And did you take a plea to manslaughter one to cover Indictment 186 and robbery one to cover one of the other indictments, I'm not familiar with the number, right now.

THE COURT: That was Indictment 188.

Q 188, do you recall that? A Yes, I do.

Q And subsequent to September 17, 1969, did you have occasion to be visited by the probation officer of this Court?

A Yes, I did.

Q And do you recall the conversation having to do with your guilt or innocence of the crime of manslaughter that you had with that probation officer? A Yes, I did.

Q Would you state that upon the record, please?

MR. GOLDSMITH: Now, I object to any conversation he had with the probation officer.

THE COURT: Objection sustained.

Q Well, you tell us now, in your own words, being that

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this is a hearing to withdraw your plea that you entered before this Court on September 17, 1969, you tell us in your own words why you want to withdraw your pleas? A I was pressed into taking a plea by the District Attorney and was told that if I did not say that--that no plea was offered to me I couldn't come down here and tell anybody--

THE COURT: Couldn't what?

THE WITNESS: I couldn't come down and tell anybody that a plea was offered to me unless the plea in my charge originally unless it would not be given to me.

A (Cont'g) I was pressed into it because his own witnesses that he put on the stand, he had them locked up for perjury. After I took a plea of guilty, the deal was they would go free if I took a plea to these two charges. And the two--and the people were cut loose on the charge of perjury. It was dropped.

And they went to the street. His own witnesses which I like to have them subpoenaed because it's necessary and they let them take the stand. After this here, I was told them other two charges would be dropped; any time I get would be running concurrent and I would get no more than 15 years. So I did--see, I was pressed into it.

THE COURT: Who pressed you into it?

THE WITNESS: The District Attorney.

THE COURT: Did you talk to the District Attorney?

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THE WITNESS: No, he did through my counsel.

THE COURT: What's that?

THE WITNESS: He did it through my counsel.

THE COURT: You didn't talk to the District Attorney, did you?

THE WITNESS: No, I didn't.

THE COURT: All right, proceed.

A (Cont'g) After this here, I came downstairs and the trial had been stopped after the plea was entered. But I was coerced and pressed into taking this plea, that I would be railroaded if I didn't, which I was being railroaded anyway from Judge Streit.

THE COURT: Anything else, Mr. Braunstein?

Q When you say "cut loose," what do you mean by the expression, "cut loose?" A The charge would be dismissed.

Q Against these two girls? A Yes, it was.

MR. BRAUNSTEIN: That's all, Your Honor.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. GOLDSMITH:

Q Sir, who promised you 15 years? A The lawyer said I would get more than 15 years.

MR. GOLDSMITH: I have no further questions.

THE COURT: You didn't discuss this case with the

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Court, did you?

THE WITNESS: Excuse me?

THE COURT: You didn't discuss this case with the Judge, did you?

THE WITNESS: No, well, this is what was told to me not to do. If I was told you a promise was made to me then nothing would have happened, I would have continued on.

THE COURT: Any further questions?

MR. BRAUNSTEIN: May I ask one question.

REDIRECT EXAMINATION

BY MR. BRAUNSTEIN:

Q You said something to the Court on October 31st that there was a threat made that the District Attorney was going to take your child; do you recall that statement?

THE WITNESS: Yes, it were.

Q Who was the mother of that child, if you know, or if you care to tell? A Linda West.

MR. BRAUNSTEIN: Linda West. That's all.

THE COURT: Any further questions?

MR. GOLDSMITH: I have no further questions.

THE COURT: Step down.

(Witness excused.)

THE COURT: Anything else on behalf of this defendant,

Mr. Braunstein?

MR. BRAUNSTEIN: I have no further evidence on behalf of this defendant unless, if I might be permitted right here to ask him, I forgot to ask him one question. Is there anything else, Perry, that you want to tell the Court with respect to your application, now, about withdrawing your plea that I haven't asked you or I haven't touched upon?

THE DEFENDANT: I would like to have the two witnesses that the District Attorney had locked up brought here for this hearing. In this way they can tell their part of this here, the way the deal went. If it's going to be law and order.

MR. BRAUNSTEIN: Would you concede it?

MR. GOLDSMITH: What, concede what?

MR. BRAUNSTEIN: Will you concede that the two witnesses were locked up?

MR. GOLDSMITH: No, I will not concede any such thing. They weren't locked up.

THE COURT: The record is quite clear in this matter.

MR. GOLDSMITH: It's all fantasy.

THE COURT: Anything else, Mr. Braunstein?

MR. BRAUNSTEIN: That's all; except I object to the statement made by Mr. Goldsmith that they weren't locked u

The record does disclose it, wasn't brought out before the jury but the record does disclose they were arrested and taken over to the Court and at the Court something occurred over there.

THE COURT: And that thereafter they came into this Court and they recanted their recantation before the Judge.

MR. BRAUNSTEIN: Right.

THE COURT: The record is quite clear. Anything else?

MR. BRAUNSTEIN: That's all, Your Honor.

THE COURT: That is the defendant's case on his application to withdraw his plea.

MR. GOLDSMITH: May I be heard, Judge? May I be heard on the case?

THE COURT: Yes.

MR. GOLDSMITH: After the defendant--

THE COURT: I just want to finish the case in an orderly way. Sit down, Ford.

MR. GOLDSMITH: After the defendant rests, I would like to say this, Your Honor. The plea, the pleas that were offered by this defendant came during the course of a trial before Your Honor under Indictment No. 186 of '69, charging the defendant with murder.

Your Honor will recall that he decided to plead guilty to the crime of manslaughter in the first degree

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after the People's case, so that he is now fully familiar with all of the facts that the People have to offer in this case. I say to Your Honor that that in and of itself is prejudicial to the People, prejudicial to the State. We're prejudiced by the fact that he has obtained our entire case in advance of trial and now he wants to withdraw his plea. But even more important than that, I think Your Honor is aware, and certainly the records of this Court will bear out, that the very case in which this defendant took the plea of manslaughter, namely, Indictment No., Indictment No.--I'm sorry--not the very case, but that another case, No. 187 of 1969 in which this defendant and two others were indicted for murder, involving the throwing of a young man off a roof that I tried that case, that case went to consummation, went to a jury and there was a verdict of guilty against the other two men. I had severed Perry Ford from that case.

And it's interesting to note that while he takes the stand under oath and he says that there was a threat made through his lawyer, and I didn't say anything to his lawyer I certainly made no threats to his attorney that could be conveyed to this defendant, but in any event, he says there was a threat made and conveyed to him that his child with Linda West would be taken from him.

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And it's interesting to note, it's all part of the record of this Court, the testimony of Linda West, in that other case where she involves this defendant as being the prime mover, now he was not on trial. She involves him in her testimony and being the prime mover in the case where that boy was thrown off the roof. That's her testimony.

And secondly, he wasn't in the case. There was no prejudice to him. He had been severed and certainly there was no pressure on her to testify and that in this case her testimony would indicate that he was the prime mover. Now, this is the girl whom he says is the mother of his baby, who was threatened, that he was threatened that the baby would be taken. I mention it only on--it's a matter of fact; it's a record of this Court, to which this Court has access, and I think it refutes the very statements that he makes.

We ask the motion be denied.

THE DEFENDANT: Your Honor, can I say something?

THE COURT: Yes.

THE DEFENDANT: The District Attorney said there was no question about Linda West. He had her locked up and put in jail. Threatened to take her child away from her because he find something in the house. This is the whole

case. She was locked up and they was pressuring--and the other two persons were found guilty and I'm ready to go to trial on everything. If I blow it's my life. The DA pressured her and every witness he got on the stand. When they didn't do what he wanted them to do then he locked them up. All you have to do is bring the witnesses in and take the stand and let the jury decide who's lying.

THE COURT: Anything else you want to say?

THE DEFENDANT: No, it just that he--he made--during my trial it was three motions, I think it was three, for a mistrial which all of them was denied, which was, I believe, a prejudice to the Courtroom at that time.

THE COURT: Anything else you want to say?

THE DEFENDANT: No.

THE COURT: Sit down.

MR. BRAUNSTEIN: May I, if Your Honor pleases, merely arise to correct the record. Mr. Goldsmith said that his entire case was in and when an entire case is in there should be an indication that the People rested. These pleas that were interposed by the defendant, Perry Ford, we had no indication their entire case was in. The record indicates that the People did not rest, whether it was three-quarters of their case or four-fifths of their case or ninety-nine and nine-tenths percent of their case, we

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had no way of determining whether their entire case was in and I think Your Honor's recollection is best on this.

But I'm quite sure that the record indicates that the People did not rest so I must correct that statement of Mr. Goldsmith.

THE COURT: You're indulging now on the question of semantics. I'm quite sure that what the District Attorney intended was that his case was substantially in. The People did not rest. My minute book shows the People had not rested and, obviously, had not concluded their case at the time but I place no great significance on the District Attorney's statement.

MR. GOLDSMITH: Judge, I had no further witnesses.

THE COURT: All right, that may be so--

MR. GOLDSMITH: I submitted all my witnesses.

THE COURT: But you hadn't rested. On the application of this defendant to withdraw his plea, the Court has given great consideration to the matter because on October 31st when this defendant came before the Court for sentence and made his request that he withdraw his plea, from that time on, the Court has gone over my minute book, gone over the matters of any significance in this case, and the Court is ready to give its opinion now after hearing this defendant on this application.

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the District Attorney.

The defendant was indicted for murder in Indictment 186 of 1969. In Indictment 188 of 1969 the same defendant was sentenced for robbery in the first degree and other related crimes. Two other indictments are outstanding and undisposed of. In 187 of 1969, this defendant and two other individuals threw one Nicholas Chambers from a roof causing his death. In Indictment 189 of '69, this defendant shot one Nathan Goodman with a rifle causing him wounds.

In these indictments, Perry Ford was indicted for murder in two counts and assault in several counts and possession of a weapon, respectively.

On September 11, 1969, the trial of Indictment 186 of 1969 commenced before this Court and a jury. The jury was selected. The case was continued to September 15, 1969 and September 16. The District Attorney produced the Associate Medical Examiner, Vera Quintano, the mother of the deceased, Detective John F. Farrell, Judy Ringer, who came up from Atlanta, Georgia, Bernadette Combs and Connie Ringer. Five exhibits were offered, four by the People and one by the defendant.

On September 17, 1969, after four days of trial, the defendant through his attorney informed the Court that he

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did not want to proceed with the trial of the action but instead desired to plead guilty to a lesser degree of crime of murder.

Conferences were held between the Court and the Assistant District Attorney trying the case and counsel for the defendant. Further conferences were held between the defendant and his mother, and between counsel for the defendant and the defendant, and counsel for the defendant, the defendant and defendant's mother. All conferences to which the Court was not a party concerned themselves, the Court has been informed, with whether defendant should proceed with the trial or whether he should withdraw his plea of not guilty to the indictment on which he was on trial and plead guilty to a lesser degree of the crime, if such opportunity was made available to him.

The Assistant District Attorney offered to permit the defendant to plead guilty to manslaughter in the first degree on Indictment 186 of 1969 and an offer to permit the defendant to plead guilty to robbery in the first degree and related crimes on Indictment 188 of 1969 was made by the Assistant District Attorney. The Court consented to accept both such pleas to the offers.

Thereafter, the defendant Perry Ford withdrew his pleas of not guilty on these two indictments 186 and 188

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of 1969, and the defendant pleaded guilty to the offered pleas.

Perry Ford, this defendant, was adequately informed of the consequences of his act in pleading guilty as he did. He knowingly and understandingly offered his pleas of guilty to counts in the two indictments. The Court was careful to ask if he was pleading guilty voluntarily to the particular crime and asked if he was coerced into pleading guilty.

He answered, yes, and said, no, to cover both these questions. The facts of the crimes to which he pleaded guilty were amply and specifically called to his attention and recited in his presence by both the Assistant District Attorney in charge of the case and the Court.

Thereupon, the Court fixed October 31, 1969, at 2:00 p.m. as the date and time for sentence following the pedigree given by the defendant. Thereafter, the jury, after four days of listening to the trial of this action, was discharged by the Court.

When the Court received the probation report from the Probation Department it was noted that the defendant quote desires to withdraw both guilty pleas and to stand trial close quote.

On October 31, 1969, the Court asked the defendant

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about the statement appearing in the probation report and the defendant said quote I want to withdraw both pleas and go to trial close quote.

Whereupon the Court adjourned the sentence of this defendant quote to take under advisement your request to withdraw your plea of guilty close quote.

These are the facts in this case.

The opinion of the Court of Appeals in *People against Beasley* was made available to the Court after this occasion. The Court advised the Assistant District Attorney and counsel for the defendant and the defendant that defendant's request to withdraw his plea would be the subject of a hearing to determine the issue raised by defendant's request. Such hearing has now been held. The defendant has offered no valid, acceptable or compelling reason that would justify or support this Court in permitting this defendant to withdraw his pleas of guilty as entered on September 17, 1969, and to go to trial on the indictments to which he has already pleaded guilty. The reasons offered by the defendant are spurious and obviously arrived at after the People had already put in a substantial part of their case. This action on the part of the defendant is a deliberate attempt to defeat justice, calculated to frighten witnesses, whose testimony he has already heard

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in the People's case.

THE DEFENDANT: Your Honor, may I say something?

THE COURT: This is not a case involving an innocent, naive defendant who was misled or misunderstood what took place.

The defendant sat for four days and listened to the People's witnesses testify to his, the defendant's, involvement with the killing of another human being. One of the witnesses was this defendant's alleged girl friend.

Before the pleas of guilty were taken, the defendant has ample time to discuss his actions and their consequences with his mother. His attorney, an able, seasoned and dedicated lawyer discussed this case thoroughly with the defendant in the presence of the Court.

This defendant was ably represented. His Constitutional rights were adequately protected.

In People against Heasley, decided by the Court of Appeals on December 10, 1969, an order of the Appellate Division unanimously affirming an order denying a writ of error coram nobis was reversed and the proceeding remanded to the trial court for a hearing.

In that matter, the defendant pleaded guilty to manslaughter in the first degree in satisfaction of an indictment charging him with felony murder in the first

degree. Following his plea, he was sentenced to a term of from 10 to 20 years in prison. The Court there said:

"Defendant brought this petition for a writ of error coram nobis alleging that it was error for the Court to accept a plea of guilty after being notified that there was 'some misunderstanding' with respect to the plea. Moreover, he states that certain statements made during sentencing imposed a duty on the trial court to make further inquiries as to the voluntariness of the plea. The writ was denied without a hearing and the Appellate Division unanimously affirmed."

The Court of Appeals said, among other things:

". . . the defendant is entitled to a hearing on whether his guilty plea was knowingly and meaningfully entered. The record here indicates that there is sufficient doubt about the voluntariness of his plea to require such a hearing and that the trial judge did not make sufficient inquiries to alleviate the doubt. Although defendant's statement at sentencing is somewhat vague."

The Court continued in its opinion and said:

"Although the trial court proceeded to make some inquiries of the defendant, they appear to be insufficient to determine if the plea was entered

intelligently. He was properly asked whether he understood the consequences of his plea, but the court failed to conduct an inquiry as to whether he understood the nature of the charge. No questions were asked about defendant's participation in the crime, nor was there any discussion of the facts involved."

In the instant matter, this Court has fulfilled the requirements with respect to taking Perry Ford's plea knowingly and intelligently as mandated by the Court of Appeals.

On September 17, 1969, the day the defendant entered this plea which he now seeks to withdraw, he asked to talk to his mother. This took place after the defendant was on trial, indicted for murder for three days before a jury. Let me read from the minutes of that day.

I read from page 2 of those minutes.

plea in writing

"MR. BRAUNSTEIN: If Your Honor please, Mr. Goldsmith at this stage, if Your Honor please, with respect to this Indictment No. 186, I had a conference with the defendant. I had a conference with the mother of the defendant last evening. I had a conference at the office of the District Attorney last evening, and I was informed that the three girls who were on bail, that they were going to be paroled,

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or some arrangements were made for them to return to their home. As a result of these conferences, as a result of everything, and as a result of the--there is no secret about it--fact that this defendant is charged in this Court, in addition to the indictment on which we have been proceeding to trial, this Indictment 186, the charge is murder, this defendant is charged with the crime of murder under an Indictment No. 187 of 1969, he is also charged with the crime of robbery in the first degree, Indictment No. 188, 1969, and he is also charged in an Indictment 189, 1969, with the crime of assault. I'm not doing this, and I have explained to the defendant, and I want the Court to know and I want--I'm stating it on the record most emphatically, that the application that I'm about to make is not an application in the interests of expediting anything, because I don't stand here, when I represent a defendant, in an effort to expedite. If I'm assigned, I go through it all the way, and I don't look to take shortcuts on anything.

But in the interests of justice and in the interests of law and order and in the interest of the defendant, and, I might even say, in the interests of the People of the State of New York, of which I and you and the District Attorney and everybody in this building and everybody that

walks the street are a part, as a result of these conferences, and as a result of my research and investigation, and after having talked with Perry Ford, and having talked to his mother, who is in this Courtroom, Mrs. Johnnie Ford, I am ready now, on behalf of this defendant, to enter a plea to this case, 186 of 1969, the charge of murder, a plea to manslaughter in the first degree, and then with respect to Indictment 183, 1969, enter a plea to that indictment of robbery in the first degree.

"MR. GOLDSMITH: First count.

"MR. BRAUNSTEIN: First count of the indictment.

I don't have the indictment here.

"THE COURT: First count is robbery--

"MR. BRAUNSTEIN: But Mr. Goldsmith has it. And I say this openly, and I'm not looking to extract any promises from Your Honor in sentencing, but I say this openly, that I trust that, in sentencing this defendant, any sentence that Your Honor will make on these two defendants--

"THE COURT: On these two indictments.

"MR. BRAUNSTEIN: --on these two indictments will be concurrent, instead of consecutive. Mark you, I don't make that as a condition. I merely pass it along, with respect to my thinking. And therefore, I say to Your

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Honor--and I have made this statement long, but I believe that this is not a case of being verbose, but it's a case of being very careful, because I am assigned counsel, and I don't want to leave any stones unturned. And, therefore, to repeat, on behalf of the defendant, I ask leave of the Court to withdraw his plea of not guilty to the indictment upon which he is on trial now, of not guilty to the crime of murder under 186, and to plead guilty to 186, 1969, to the crime of manslaughter in the first degree, and to plead guilty to robbery, the first count, as charged in 188, 1969, to cover all charges in all the indictments that may be pending in this Court against this defendant.

"THE COURT: Withdraw your plea of not guilty on 188.

"MR. BRAUNSTEIN: Yes. With respect to Indictment No. 188, in the light of the fact that I made a statement that I desire to plead guilty to the first count, I have been authorized to withdraw the plea entered by the defendant of not guilty and enter a plea of guilty, as to the first count of that indictment.

"COURT CLERK KURTZ: Perry Ford, you are offering to plead guilty on two indictments, 186 of 1969 and 188 of '69. If you have been previously convicted of two felonies and have been sentenced to more than one year on each and

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have served time on each, you may be treated as a persistent felony offender. Do you understand that?

"THE DEFENDANT: Yes, I do.

"COURT CLERK KURTZ: To please the District Attorney, I will mention the crimes. I never had to do it before.

"THE COURT: All right.

"COURT CLERK KURTZ: On Indictment 186, you are offering to plead guilty to a felony, murder. On Indictment 188--

"MR. BRAUNSTEIN: No, no, that's incorrect. That's manslaughter one.

"THE COURT: All right, start all over again. Expunge the record and start all over again.

"COURT CLERK KURTZ: On Indictment 186 of '69, you are offering to plead guilty to a felony, manslaughter--

"THE COURT: In the first degree.

"COURT CLERK KURTZ: --in the first degree. On Indictment 188 of '69, you are offering to plead guilty to a felony, robbery in the first degree. If you have been previously convicted of two felonies and have been sentenced to more than a year on each and have served time on each, you may be treated as a persistent felony offender. Do you understand that?

"THE DEFENDANT: Yes, I do.

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"MR. GOLDSMITH: If Your Honor please, People recommend the acceptance of each of the pleas offered by the defendant, through his lawyer.

"The facts, with respect to the murder case, on which the defendant is offering to plead guilty to manslaughter in the first degree, are known to Your Honor, having heard ninety-nine and nine-tenths of the People's case up to this point. Briefly, of course, we contend that, on December 17, 1968, at 1229 Franklin Avenue, here in Bronx County, this defendant shot and killed one Ronald Quintano, who, at that time, I think, was aged 19.

"In connection with the robbery case, this occurred on December 21, 1968, four days after the homicide, and it occurred at 2023 Webster Avenue, in the basement apartment of a young man named Vanhook, Korean K-o-r-e-a-n, Korean Vanhook. This defendant, Ford, and several others-- I think it was three others--yes--came into the apartment of Vanhook. Ford had a gun. As a matter of fact, at one point, when Vanhook was on the floor, it is alleged that Ford fired a shot right past his ear. And they robbed Vanhook. He had no money, and they took his furniture. They took a stereo record player, for which he had paid \$379.52. I have the bill. They took a portable GM record player, \$126. I know where it was purchased and when.

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They took a pole lamp, a television and record album. Total value of the material, property, is about \$600. And, strange as it may seem, we recovered everything. We located it where he had taken it to. We found it at the home of one Linda West, a girl friend of Ford's. And we recovered everything but the stereo. That was never recovered, but the other items were recovered in the home of Linda West. And he had brought them there.

"Now, why do we recommend a lesser plea in a case of this kind? Frankly, it's only my opinion, but I think I'm entitled to my opinion, had we gone through with this trial, I believe this defendant would have been convicted of murder. But there are all sorts of things that enter into a disposition. This is a young man. He still has many years of his life to go. Perhaps, the purpose of incarceration, in jail, is not punishment. Perhaps, it is rehabilitation. We try. If he gets enough time to be rehabilitated--and I think he needs rehabilitation, from his past background--perhaps, this is the best disposition. We shouldn't send him away for life, but send him away for a time long enough to protect society, as well as try to do something with the balance of his life. And so, I feel, under the plea of manslaughter, the Court will be in a better position, and its hands will not be bound by

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a mandatory sentence, as it would be in the case of a conviction, and the Court can read the probation report, find out what really makes Perry Ford tick, and maybe try to help him in some way. The Court will be in a position to deal fairly, as well as adequately with him, and I therefore recommend the acceptance of the plea.

"THE COURT: With respect to Indictment No. 186 of 1969: Is your name Perry Ford?"

"THE DEFENDANT: Yes, it is.

"THE COURT: Did you just hear your lawyer make a statement to this Court that, in your behalf, a plea of guilty is being entered to the crime of manslaughter in the first degree, to cover the entire indictment? Did you hear him say that?"

"THE DEFENDANT: Yes, I did.

"THE COURT: Have you discussed this case with your lawyer?"

"THE DEFENDANT: Yes.

"THE COURT: What's that?"

"THE DEFENDANT: Yes.

"THE COURT: Now, speak up loudly, so the reporter can hear you.

"THE DEFENDANT: Yes.

"THE COURT: Do you now plead guilty to the crime of manslaughter in the first degree, to cover the entire

indictment?

"THE DEFENDANT: Yes, I do.

"THE COURT: Is this plea of guilty being made voluntarily by you?

"THE DEFENDANT: Yes, it is.

"THE COURT: Has anyone threatened you or coerced you into making this plea?

"THE DEFENDANT: No, sir.

"THE COURT: Do you plead guilty to the facts that, on December 17, 1968, you did shoot one Ronald Quintano, who expired and died on December 28th, as a result of the gunshot wound you inflicted upon him? Do you plead guilty to these facts?

"THE DEFENDANT: Yes, I do.

"THE COURT: Has the District Attorney or your lawyer or the Court, or any one in their behalf, made any commitment to you, or any promise to you, as to what the sentence of this Court will be?

"THE DEFENDANT: No, sir.

"THE COURT: In view of the recommendation of the District Attorney and the facts as presented to the Court in this case, the Court will accept the plea of guilty on the part of this defendant to the crime of manslaughter in the first degree, under Indictment 186 of 1969.

"With respect to Indictment 138 of 1969: Is your name Perry Ford?

"THE DEFENDANT: Yes, it is.

"THE COURT: Did you just hear your lawyer make a statement to this Court that, in your behalf, a plea of guilty is being entered to the crime of robbery in the first degree, under the first count of that indictment? Did you hear him say that?

"THE DEFENDANT: Yes, sir.

"THE COURT: Have you discussed that case with your lawyer?

"THE DEFENDANT: Yes, I have.

"THE COURT: The robbery case.

"THE DEFENDANT: Yes.

"THE COURT: Speak up, now.

"THE DEFENDANT: Yes, I have.

"THE COURT: Do you now plead guilty to the crime of robbery in the first degree, under the first count of Indictment 138 of 1969, to cover the entire indictment?

"THE DEFENDANT: Yes, I do.

"THE COURT: Is this plea of guilty being made voluntarily by you?

"THE DEFENDANT: Yes, sir.

"THE COURT: Has anyone threatened you or coerced you

into making this plea?

"THE DEFENDANT: No, sir.

"THE COURT: Do you now plead guilty to the facts that, on December 21, 1968, at premises 2028 Webster Avenue, in the County of Bronx, in the apartment of Koreen Vanhook, you did, together with several others, rob him of his personal belongings? Do you plead guilty to those facts? Do you plead guilty to those facts?

"(There was a conference between the defendant and his counsel at this point.)

The defendant answered and said, "Yes, I do.

"THE COURT: Has the District Attorney or your attorney or the Court, or anyone on their behalf, made any promise to you, or commitment to you, as to what the sentence of the Court will be?

The defendant answered and said, "No, sir.

"THE COURT: In view of the recommendation of the District Attorney and the facts as presented to the Court, the Court will accept the plea of guilty on the part of this defendant to the crime of robbery in the first degree, under the first count of Indictment No. 188 of 1969, to cover the entire indictment.

"At the same time, the Court wants to make it clear that, in view of the disposition of Indictment 186 of 1969

and 188 of 1969, in the question of sentence on both these indictments, the Indictment 187 of 1969 and 189 of 1969 will be considered by the Court.

"COURT CLERK KURTZ: 189, Your Honor?

"THE COURT: 187 of 1969 and 189 of 1969 will be considered by the Court.

"MR. BRAUNSTEIN: Before the pedigree is taken, and in view of Your Honor's last statement that Your Honor will take into consideration dispositions with respect to the indictments numbered--

"THE COURT: 187.

"MR. BRAUNSTEIN: --187 and 189, I assume that, at the time of sentence, the District Attorney will have a motion to make with respect to these indictments, so that the entire package will be complete on that day.

"THE COURT: Will be considered at one time. I'm assuming that's so.

"MR. GOLDSMITH: Yes.

"MR. BRAUNSTEIN: Thank you, Your Honor.

The Court's answer is, "Yes, all right.

"COURT CLERK KURTZ: Perry Ford, raise your right hand.

"(Whereupon, the defendant was sworn and pedigree taken.)

"THE COURT: October 31st for sentence at 2:00 p.m."

After a review of all the facts herein, including the minutes of the proceedings when the defendant interrupted his trial to offer pleas to counts in the two indictments which were acceptable to the DA's office and after the present hearing, this Court has concluded that the defendant, when he pleaded guilty as he did, did so intelligently, understandingly, with knowledge of the consequences that would flow therefrom and voluntarily.

This attempt on his part is an effort to prejudice the People. The District Attorney's office reviewed defendant's application averring that over ninety percent of the People's case was interposed before the defendant's pleas were taken. To grant defendant's request on this motion would constitute real prejudice to the People and permit a trifling with the Court and the judicial process.

Under all the circumstances, this defendant has been adequately advised of his rights before he pleaded, ably represented by counsel, and understood what he did. The denial of his request is in no wise a denial of justice nor does such action constitute prejudice to this defendant. This application is denied.

The Court is ready to sentence the defendant.

MR. GOLDBERGER: May I be heard, Judge?

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THE COURT: You may.

MR. GOLDSMITH: Your Honor's reading of the minutes brings back to mind that after these two witnesses had testified and their testimony was contrary to their grand jury testimony, that the detectives in the case did take some police action. I think I indicated earlier today that there was no such action taken but, frankly, I don't have the minutes here. I haven't looked at them since September and I was mistaken. There was some action taken but I don't believe they were actually booked. I don't know just what happened but the point is they indicated they did want to come back and they did want to tell the truth and I afforded them that opportunity. And I wanted to make that correction.

And secondly, I want to ask Your Honor, in passing upon the defendant, that your sentence, whatever it shall be, shall cover the other two indictments, Indictments No. 187 and 189 both of 1969.

THE COURT: Arraign the defendant for sentence, please.

COURT CLERK: Perry Ford, you are arraigned for sentence under indictment 186 of '69 wherein you pleaded guilty to the charge of the crime of manslaughter in the first degree, said plea to also cover Indictments 187 of

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'69 and 109 of '69. Have you any legal reason why judgment of the Court should not now be pronounced upon you?

THE DEFENDANT: Yes, I do.

COURT CLERK: Do you have anything to say in your behalf?

THE DEFENDANT: Yes, I do.

COURT CLERK: You may speak for yourself or your attorney may speak for you.

THE DEFENDANT: I'll speak for myself.

THE COURT: Speak up loudly so I can hear you.

THE DEFENDANT: I believe that the District Attorney and the Judge is prejudiced against me in this case. You can pass sentence if you want to. But you can pull two witnesses to the stand and verify what I'm saying, they were pressured into doing what they did and they were locked up. Since he brought up the other case, he did this here on the stand, when he kept repeating, "Do you know what perjury is?" But after I pleaded guilty then these charges were dropped. If there was any charges, they wouldn't have dropped them, they should have committed

THE COURT: How is the Judge prejudiced against you?

THE DEFENDANT: Because he denied my motion for a mistrial three times on evidence that he was going into another case when I was on trial in one case and I did

not take the stand.

THE COURT: You'll understand when the Judge denies a motion for mistrial it's usually denied on the question of law and it's in the Judge's discretion.

THE DEFENDANT: You speak of law, there's no law in this Court. How can you speak of it?

THE COURT: All right.

THE DEFENDANT: Another thing, you say "rehabilitation." That's a change. I'm never going to change.

THE COURT: What?

THE DEFENDANT: You speak of me getting rehabilitated and changing, you're not going to ever change me. No matter how much time you give me or keep me in the jail. This is me and I'll be this way till I die; do you understand?

THE COURT: Yes, I understand.

THE DEFENDANT: Do your thing.

THE COURT: I didn't speak of rehabilitating you. This was the District Attorney, Ford.

Anything else before sentence of the Court should be imposed?

MR. BRAUNSTEIN: I can't add anything to what the defendant has stated at this time. I was going to make reference to a very able statement that Mr. Goldsmith made.

In fact, it was one of the most ablest statements in this entire case, when he stated that he would like to know what makes Perry Ford tick and that, possibly, this is a case where Perry Ford can be rehabilitated, and it's right in the record, as Your Honor read it, and especially when he stated, "Perhaps, the purpose of incarceration, in jail, is not punishment. Perhaps, it is rehabilitation. We try. If he gets enough time to be rehabilitated--"

I want Your Honor to take into consideration this is a young man and this is probably his first conflict, seriously with the law. He has been in difficulties before and I think under all the circumstances, Your Honor should do what is right for society but also bear in mind that you have an obligation to do what is right so far as this defendant is concerned.

THE COURT: Perry Ford, you were indicted by the Grand Jury of murder in the first degree in which you went to trial and I think the record is fairly complete in light of what the Court just said, after four days of trial, you withdrew your plea of not guilty to that indictment and pleaded guilty to manslaughter in the first degree. You also were indicted for robbery in the first degree and related crimes to which you pleaded guilty in a separate indictment. Two other indictments remain un-

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disposed of. Indictment 187 and 189, and one of them involved throwing somebody from a roof to which your co-defendants were convicted. And the case was handled with respect to you.

Your counsel has just indicated this is your first conflict with the law. Perhaps, counsel isn't aware of the fact that when you were thirteen and a half years old you became physically abusive. When you were told to leave Public School 136 and you resisted arrest by a police officer. You were again brought in in 1964 after you hit Norma Quincoran (phonetic) about the right eye and on the left hand with a broomstick.

The probation report indicates that in 1965, you were sent to the State Training School by the Juvenile Term, Bronx Court. As an adult, you've been assaultive, possessing dangerous weapons until those charges on which you were brought to trial here.

You just indicated to the Court that there's no chance of rehabilitating you. You said you're you and nobody's going to change you for as long as you live.

I've read the probation report very thoroughly. Obviously, what you said may well be the truth. You do have an aggressive pattern. You show no remorse for the killing of two human beings.

THE DEFENDANT: Can you prove I killed them? Can you prove I killed them? Just going by his word. I just got through telling you why I want to go to trial to prove I didn't. What are you telling me?

THE COURT: Obviously, the probation indicates there was a vendetta between yourself, your gang and another gang out of which these killings arose.

THE DEFENDANT: What gang? You bring no gang to Court. You speak of things you don't have here.

THE COURT: Now, this Court has heard the witnesses against you until you decided that you had heard enough from these witnesses and you asked to withdraw your plea. I think you have been afforded every opportunity that the Court could afford you in justice to both the community and yourself.

And therefore the Court at this point orders and adjudges and directs that the defendant, for the felony aforesaid, whereof he is convicted, be and he is hereby sentenced to an indeterminate sentence of imprisonment which shall have a maximum term of 20 years, and the defendant is committed to the custody of the State Department of Correction, and he shall be delivered to Sing Sing Prison at Ossining, New York, there to be dealt with in accordance with the laws pertaining to his sentence.

The same sentence is imposed by this Court with respect to the Indictment 136 of 1969, both sentences are to run concurrently and the Court makes it very clear that, in addition, Indictment 137 of 1969 and 139 of 1969 shall be considered disposed of and I expect at this time the District Attorney will move to dismiss both of those indictments.

MR. GOLDSMITH: We don't dismiss them any more. They are covered. They are covered by these two sentences and that's the sentence of the Court.

THE DEFENDANT: Can I speak--

THE COURT: Advise--

COURT CLERK: Perry Ford, you have the right to appeal from your conviction. And to do so, you must file a notice of appeal within 30 days. If you're without funds to secure a lawyer or to secure the testimony of the--transcript of the testimony, then the Appellate Division will assign such lawyer and order such transcript of the testimony; do you understand that?

THE DEFENDANT: Yeah, I understand.

THE COURT: He understands for the record. Do you want to see your mother? Over there.

All right, Mrs. Ford, Johannie Ford.

• • •

THIS IS TO CERTIFY that the foregoing is a true and

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Sentence

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accurate transcription of the original stenographic notes.

Thomas J. Landers

Thomas J. Landers, C.S.R.
Official Court Reporter

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X
4 PERRY FORD, :

5 Petitioner, :

6 vs. :

76 Civ 2245

7 JACK R. CZARNETSKY, Superintendent, :
8 Eastern New York Correctional :
9 Facility, :

10 Respondent. :
11 -----X

12 Before:

13 HON. HENRY F. WERKER,

14 District Judge.

15 New York, December 17, 1976,
16 2:40 p.m.

17 APPEARANCES:

18 CHESTER L. MIRSKY, ESQ.,
19 Attorney for petitioner

20 LOUIS J. LEFKOWITZ, ESQ.,
21 Attorney General of the State of New York
22 Attorney for respondent

23 BY: KEVIN MC KAY, ESQ.,
24 Assistant Attorney General
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(Case called.)

MR. MIRSKY: Your Honor, the petitioner is ready.

MR. MC KAY: The respondent is ready.

MR. MIRSKY: Your Honor, the petitioner would call as its first witness Mr. Noah Braunstein. N O A H B R A U N S T E I N, called as a witness by the petitioner, being first duly sworn, testified as follows:

THE WITNESS: My present address is 1370 Veterans Avenue, Los Angeles, California 90024.

Up until September 30th I maintained my offices for the practice of law at No. 475 Fifth Avenue, New York City.

MR. MC KAY: Your Honor, at this time I would ask if the petitioner is going to have a second witness that he be excluded from the courtroom.

MR. MIRSKY: The petitioner.

THE COURT: It will be the petitioner. We are not going to exclude him from the courtroom.

THE WITNESS: Off the record. May I impose upon your Honor? I have a little defect in hearing after 50 years of the practice of law, so if you might raise your voice so that I can hear it.

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THE COURT: I'll raise it so that you
can hear it.

THE WITNESS: I hope it is no imposi-
tion.

THE COURT: No, no imposition.

DIRECT EXAMINATION

BY MR. MIRSKY:

Q You said you had an address on Fifth
Avenue, is that correct?

A That's correct.

Q How long did you practice law in the City
and State of New York?

A I was admitted in the Appellate Division,
First Department, in May, 1927.

Q Did you practice law continuously sub-
sequent to that until the time of your retirement,
sir?

A Yes, I did.

Q When was it that you retired?

A I retired as of September 30, 1975.

Q Was there any particular area of the law
which you had practiced in more than other areas?

A Well, I was engaged generally in trial prac-
tice but I specialized in the trial of criminal ac-

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2 tions, in both federal and state courts.

3 Q Mr. Braunstein, were you on the panel of
4 assigned attorneys in 1969? In fact, in and about
5 September of 1969 were you on the panel of assigned
6 attorneys in New York County and Bronx County?

7 A Yes, I was on that panel.

8 Prior to being on the panel I received
9 assignments from the County Court, that was the predeces-
10 sor to the Supreme Court in the County of Bronx.

11 Q Were you also admitted to practice in the
12 United States courts?

13 A Yes.

14 Q In this district?

15 A Yes, sir, in this district and in the
16 Eastern District.

17 Q Mr. Braunstein, I want to call your atten-
18 tion, if I might, sir, to September of 1969 and ask
19 you if you recall of an action involving the People of
20 the State of New York against Perry Ford?

21 A I do.

22 Q And do you see the defendant in court to-
23 day?

24 A Well, I see him at the position where the
25 petitioner is but I honestly can't say that I recognize

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him. He has matured.

Q I wanted to ask you if you recall discussing
the case of People of the State of New York against Perry
Ford with me.

A Yes, we had telephone conversations. You
identified yourself as a member of the bar -- and
now I'll tell it to you -- I checked it out and then I
felt free to discuss it with you.

Q Thank you.

 If you could tell me, Mr. Braunstein,
whether you have a recollection of the proceedings that
occurred in the trial of the action of the People of
the State of New York against Perry Ford?

A Yes, I have a recollection of the pro-
ceedings that took place in the course of the trial
and up until the culmination of the entire proceed-
ings.

Q Now, I am referring in particular, sir, to
indictment 186 of 1969, in which Mr. Ford was charged,
among other charges, with murdering an individual
whose name was Quintana.

 I ask you if you recall that particular
action which was brought against Mr. Ford?

A Yes. That was one of several indict-

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Braunstein-direct

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ments to which I was assigned as counsel to Mr. Ford. To the best of my recollection, I never practiced law by numbers.

If you asked me what 1892 was I wouldn't know. I did know that there was the section of the law that had to do with the giving of bad checks but I wouldn't know what 186 was. You tell me now it was a murder indictment but it was one of two murder indictments, and there were two other indictments that charged robbery and then there was a fifth indictment that charged assault, I think.

Q Yes. I believe the victim's name in that case was someone by the name of Nathan Goodman; is that your recollection?

A That's correct. I remember that name vividly because I checked on the individual and I found out the ethnic background, much to my surprise, of Nathan Goodman.

Q Now, I wanted to recall to your attention the particular action involving the People of the State of New York and Perry Ford relative to the death of the individual by the name of Quintana and ask you if you particularly recall that action, sir.

A Yes, I do recall it.

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Braunstein-direct

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Q Did that case go to trial on or about
September, 1969?

A Well, if you say that it did go to trial in
September of '69 I would be inclined to agree with
you. I don't remember the exact dates.

Q Well, you do recall it going to trial?

A I remember most vividly going to trial with
that case.

Q Could you tell me who the judge was that
presided over the trial of that action?

A The judge was Francis J. Bloustein, a justice
of the Supreme Court of the State of New York, sitting
in and for the County of Bronx.

Q Could you tell me who the assistant
district attorney was in that case?

A The assistant district attorney was Irwin Gold-
smith, who then was the chief of the Homicide Bureau
in the District Attorney's office of the County of
Bronx.

Q Now, did you select a jury in the course
of the trial of that action?

A I don't hear you.

Q Did you select a jury in the course of the
trial of that action?

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A Yes. A rule had recently gone into effect that they were going to follow the federal rule but the Appellate Division came down with a determination, until it was decided upon definitely, that at the option of counsel, counsel would have the right to select the jury and avoid the court selecting the jury.

Q Did you do that in that case?

A Yes.

Q And subsequent to the selection of the jury were witnesses sworn in the case?

A Yes.

Q Do you recall any testimony that was given by an assistant medical examiner of the City of New York?

A Well, in order -- it was a homicide case and if you are a good district attorney the most important thing to prove is the corpus delicti, and the medical examiner was a part of the proof that had to go with the corpus delicti, that he examined what was a dead body, which was the body of the deceased which was alleged to have been stricken with a bullet, according to the indictment.

Q Now, subsequent to the medical examiner's

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2 testifying did someone else testify related to the
3 deceased?

4 A Yes. In furtherance of the corpus
5 delicti, in answer to the question who, the mother of
6 the deceased identified the body as having -- that she
7 attended at the City Morque and identified the body.

8 Q And subsequent to the testimony of the mo-
9 ther was there testimony by a detective or police officer
10 of the City and State of New York?

11 A It was a Detective Farrell, whose testi-
12 mony was merely perfunctory and, I would say, innocuous.
13 He was there merely as -- to show a chain of events, that
14 he made the arrest and as to whether or not he took any
15 statements from the defendant.

16 Q Had he taken any statements from the de-
17 fendant Perry Ford?

18 A I can't recall that.

19 Q Do you recall, sir, whether or not he could
20 testify relevant to Perry Ford's presence on the scene
21 of the crime?

22 A The best of my recollection, he gave no
23 such testimony because I remember most vividly that I didn't
24 cross examine the police officer, except merely to some
25 caliber of the pistol or something else that I tried

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2 to connect it up with what the medical examiner had
3 said with respect to the bullet hole.

4 THE COURT: Mr. Mirsky, I am not retrying
5 this criminal case.

6 MR. MIRSKY: No, your Honor, but I think
7 it is necessary, in order that we see the posture
8 that the defendant was in at the time he took the plea,
9 for you to just find out briefly, as we are doing now,
10 what witnesses had proceeded and the state of the
11 People's case at the time of the plea. Much issue
12 has been made of that.

13 THE COURT: I don't know that anybody
14 has made an issue of that excepting the defendant.

15 MR. MIRSKY: No. I think it's one of
16 the allegations that will come entirely in.

17 THE COURT: No one denied that when it
18 was said.

19 MR. MIRSKY: I am not suggesting that
20 it is to be denied but I want the court to understand the
21 posture of that evidence.

22 THE COURT: That, as far as I am concerned,
23 is the record.

24 MR. MIRSKY: That is true, but I think
25 the court ought to see the posture of that.

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2 THE COURT: I mean I am not trying to
3 retry the criminal case. I indicate you are way
4 off base. Let's get to the thrust of this thing.

5 MR. MIRSKY: I am going right to it
6 because I think that the next witnesses are relevant to
7 the plea and it is what prompted that and I intend to
8 prove that now.

9 THE COURT: All right.

10 Q Subsequent to the testimony of the police
11 officer, Detective Farrell, did there come some
12 testimony by some civilian witnesses, Mr. Braunstein?

13 A Yes. There were three young, very young,
14 girls testified.

15 Q And were these the first witnesses to
16 connect the defendant to the commission of the
17 offense?

18 A Well, it was the purpose of the district
19 attorney to attempt to connect him.

20 Q Were these the first witnesses he attempted
21 to do that through, sir?

22 A Yes, in essence.

23 Q Now, do you recall what in substance was
24 their direct testimony and then in substance what they
25 said in response to your cross examination, sir?

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Braunstein-direct

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A Well, one of the witnesses I didn't cross examine because I learned a long time ago if they say nothing on direct that can be harmful to the defendant you leave them alone.

But the first two witnesses had testified on direct that Perry Ford visited their apartment in the Bronx and he asked them whether they had any 3-in-1 oil and that he removed a pistol, or what they thought was a pistol, and that he wanted to oil it, and he broke the pistol in front of them, took it apart, and they saw bullets fall. This was on direct. And when the oil was produced he oiled up the parts of the pistol and that he thanked them, they had some conversation, and he said, "I have to leave now," and he got up and he left, and within a very short time after he left they heard what appeared to be a shot or a noise or a backfire and they rushed to the door and on the landing -- it was in a Bronx tenement house where you go up six steps and you come to a platform, and then you go up another six steps -- they saw a body there and they saw the back of a man going down the balance of the steps which led to the hallway to the street.

Q Now, did you then cross examine these girls?

A Yes.

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Braunstein-direct

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Q Could you tell the court in substance what occurred during the course of that cross examination?

A Both of these witnesses at the request of the district attorney and the request of --

THE COURT: I am not going to listen to this. The trial record is the best evidence.

MR. MIRSKY: Your Honor, we do not have the trial record. The only record we have is the record of the plea, the record of the sentence minutes and the record of the attempts to withdraw the plea, and the reason --

THE COURT: The best evidence is the trial record.

MR. MIRSKY: I understand that to be the case.

THE COURT: I am not going to take this witness' say-so for what he got on cross examination, no matter how well intentioned or no matter how honest he may be.

MIRSKY: I am not asking it to take it for the truth of the matter asserted but to show the state of mind of this witness and this defendant immediately upon this testimony, which is quite critical

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Braunstein-direct

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to the plea situation because fight after this we go
into the plea and that's why this testimony --

THE COURT: Listen --

MR. MC KAY: Your Honor, I would object
to this line of questioning. I agree, Mr. Braunstein
is just reciting the testimony that occurred in the
state trial and I don't think this is going to help
us get to the issue at hand, whether or not Mr. Ford
knew the minimum or maximum sentence he could have
received when he pleaded guilty.

THE COURT: I am sustaining the objection.

MR. MIRSKY: Well, I would ask this, then:
in view of the fact that I was not provided with a copy
of the minutes of the trial record in this case,
whether the attorney general has a copy of those
minutes so that I can then submit them to the court.

THE COURT: Doesn't the defendant have
a copy of the minutes?

MR. MIRSKY: No, sir. All we have is
a copy of the minutes of the plea, the attempts to
withdraw the plea, and the sentence minutes.

THE WITNESS: I don't like to -- as a
witness I don't want to be a lawyer but may I tell him
the next question asked me? And I think it will clear

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2 it up.

3 THE COURT: No, you may not.

4 MR. MC KAY: I do not have a copy of the
5 trial transcript with me but I am sure it would not
6 be any trouble to obtain it to submit to the court.

7 THE COURT: I would suggest that it be
8 obtained and submitted to the court and I will draw my
9 own conclusions as to what the record shows.

10 MR. MIRSKY: That is fair enough. If it
11 does not exist it would require ordering the minutes
12 and I trust the court would sign the necessary order.

13 THE COURT: No problem.

14 BY MR. MIRSKY:

15 Q Now, subsequent to the testimony of these
16 girls what occurred after you cross examined the girls?
17 Would you tell us, Mr. Braunstein?

18 A Yes. It was at about 20 minutes to 4 and
19 Mr. Goldsmith asked whether he could adjourn for the
20 day until the next day and he motioned to the two
21 girls, "You come with me," and that's the last I saw
22 of Mr. Goldsmith and the two girls that day.

23 Q Was that the usual recess hour of the court
24 at the time when Mr. Goldstein asked --

25 A Well, the reason I think was the court asked

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2 Mr. Goldsmith did he have any more witnesses and he
3 says, "I would like to take a recess now and start
4 fresh tomorrow."

5 THE COURT: This was what hour, Mr. Braun-
6 stein?

7 THE WITNESS: About 20 to 4.

8 Judge Bloustein was a most energetic judge
9 and he used to sit until 4 and sometimes 4:30.

10 THE COURT: That's not energetic in this
11 court.

12 THE WITNESS: Well I know. Today --
13 that was in 1969. Today we don't have any time limit
14 on courts.

15 THE COURT: All right.

16 Q I would like to call your attention to the
17 following day, sir, and ask you if you recall going to
18 the court building on that day.

19 A Yes. I arrived in court -- I liked to get
20 to the courtroom at 9:30 -- and as I approached the
21 courtroom there were two middle-aged Negro women
22 called me over and said, "Did you hear what happened to
23 the two girls?"

24 I says, "I don't know what happened."

25 They says, "They were arrested. They were

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in jail last night."

I says, "I don't know anything about it."

And then Mr. Goldsmith came along with his briefcase and his files and the arresting officer, Officer Farrell, and when he adjusted himself in the courtroom he said, "Come here, Noah." He said, "I want you to know that those two girls, after you cross examined them, I took them to my office and after questioning them there I directed the police officer to take them over to the Morrisania Court -- that was the sitting Magistrate's Court at Brook Avenue and 161st Street -- to arraign them on a short affidavit of perjury."

A short affidavit at that time was an affidavit based on information and belief signed by the arresting officer, inasmuch as he wasn't able to produce a complainant at that time, and if he didn't produce a complainant within 48 hours, at the motion of the defendant's counsel it could be dismissed.

"And they were arraigned on the short affidavit and they made a call to me from jail this morning. I got a call and they wanted to see me, and"--

Q Who are you referring to here?

A Mr. Goldsmith.

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Q Please continue.

A "And the two girls came to my office this morning and they told me a story and I am going to put them back on the stand."

So I says, "Well, you are not going to put them back on the stand unless I can make a statement to the judge in the presence of the jury that I object to it and that you have caused the arrest of these two girls on the charge of perjury based on a short affidavit."

So he would have -- he says, "We'll see. We'll go in and talk to the judge."

So we knew that the judge was in the robing room, so Goldsmith and I went in together and Judge Bloustein said, "This is off the record" in the robing room, and he says, "What is this about?" and Goldsmith repeated that he had caused the arrest of the two girls, charged them with perjury, and that they had called him and they wanted to go back to their original story on direct examination, and that I insisted that the jury be apprised of it.

And Judge Bloustein, without any hesitancy, said, "You are not going to do that in my courtroom.

I says, "Well, a trial, in my opinion, is

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a search for the truth, it's not to discover who committed the crime, and in the interests of defending this boy, especially as assigned counsel, I insist that the jury know about it."

And he says, "If you do you will be thin ice," and maybe I was a little fresh, and I says, "Well, Judge, we'll both be on thin ice."

Q Let me ask you this, Mr. Braunstein.

At this time, and prior to this conversation with Judge Bloustein in the presence of Mr. Goldsmith, had this defendant, Perry Ford, ever indicated to you that he had a desire to plead guilty in this case?

A No. We never -- the district attorney had never approached me on a plea, of taking a plea, and I never discussed anything with Perry Ford.

Q What about Perry Ford; had he ever brought that up with you?

A No. Prior to this time?

Q Yes, prior to this.

A The judge then called a recess --

Q If you will wait a moment, please.

MR. MIRSKY: At this time I would like to place into evidence as Defendant's 1 and 2 two certificates of disposition relative to a Bernadette Combs

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and a Judy Ringer, who I trust when the court is in possession of a copy of the minutes of this proceeding he will see that these are the girls to which Mr. Braunstein is making reference.

THE COURT: Is it conceded that these are the two witnesses?

MR. MC KAY: It is conceded that these are the two witnesses, your Honor. But again, I don't see the relevance of pursuing this subject as to whether these girls were properly prosecuted or the charges properly made against them for perjury. This is going to whether the trial was --

THE COURT: Well, I'll receive these in evidence but as far as I am concerned we are again way off.

MR. MIRSKY: We are not talking about these girls relative to the proper prosecution of these girls but only insofar as it sheds light on the plea in this case, because I believe as you will see it will. And we are just moments from that.

THE COURT: Mind you that the fact that this defendant is or was at that time in some way affected by the condition of these girls --

MR. MIRSKY: It is of no bearing on this

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case whatsoever.

THE COURT: It means nothing in this case.

MR. MIRSKY: No. It is the effect these girls had on the case of the People of the State of New York and that's why these documents are being placed in evidence.

(Petitioner's Exhibits 1 and 2 were received in evidence.)

xx BY MR. MIRSKY:

Q If I might ask this one question with the court's permission.

Could you characterize the testimony of the girls after cross examination and compare it with their testimony on direct, sir?

MR. MC KAY: Objection, your Honor..

THE COURT: Sustained.

Q What happened subsequent to the conversation you had with Justice Bloustein in the presence of Mr. Goldsmith at which time you told Justice Bloustein of your intention to make this known to the jury?

A He said, "I've heard all I want to hear about this. Step out."

I stepped out into the courtroom and went

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2 out into the hall and Mr. Goldsmith remained in the
3 robing room, and there was a long hallway that
4 goes from the courtroom that runs parallel to 161st
5 Street -- that's the courthouse at 161st Street and
6 the Concourse -- and I could see down the hall, coming
7 out of what the clerk's office was of the District
8 Attorney's office, I saw Mr. Burton Roberts, who had
9 recently been elevated to the office of district attorney
10 and he came over to me and he said, "Hello, Noah,"
11 and he says, "What's going on here?"

12 I says, "Oh, I've had a little hassle, as I
13 usually have in trials."
14

15 And he said, "Excuse me a minute."

16 He went inside, and I don't think -- I
17 didn't realize that he was making a special trip, be-
18 cause he had a habit of -- which was a good custom --
19 in the morning of visiting every courtroom to see that
20 all the courtrooms were occupied with assistants and
21 that the assistants were pressing cases for trial.
22 The judges were there waiting for cases because there
23 was a backlog of calendars.

24 And he went into the chambers and he came
25 out and he says, "Come here, Noah." He says, "How
about taking a plea in this case?"

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Q Now, was this prior to or subsequent to his going in Judge Bloustein's chambers?

A That's right.

Q When? Subsequent or prior?

A Subsequent.

Q Okay. Now, could you please continue relative to that?

A He said, "How about taking a plea in this case?"

Mr. Goldsmith wasn't in there yet.

I said, "Well, what have you got to offer?"

He says, "How about manslaughter 1?"

I says, without talking to the defendant, "I would recommend manslaughter 2."

He says, "Look, you know I just became the D.A., you have got to make me look good." He says, "What's the difference of a label?"

I said, "No, I want manslaughter 2 because the limit on manslaughter 2 is 15 years." I said, "But I'll make you look good." I says, "I'll take a plea for this defendant, after I talk to the defendant, for one of the robbery indictments and that the sentence in that case is to run concurrent with the sentence in the manslaughter case, and that in addition to that I want

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2 a statement from Mr. Goldsmith that with respect to the
3 other indictments their disposition will await sentence,
4 the date of sentence, that a disposition will be made
5 at that time."

6 That was the usual form of handling where
7 there are several cases against a defendant, of handling
8 a dismissal, so that you don't dismiss them at the time
9 that a plea is entered.

10 Q Prior to Mr. Roberts telling you that you
11 had to make him look good did he say anything to you
12 or did you say anything to him relative to the arrest
13 of the girls on the night before?

14 A No. That wasn't a part of our conversa-
15 tion at all, except I think in passing I said -- I
16 may have interloped, interpolated that it was an
17 unusual circumstance but I want to make one thing
18 clear. When I talk about Mr. Roberts saying to me
19 that he wanted to look good, and that I wanted to make
20 him look good, that was just a part of conversation,
21 that was nothing -- there was nothir derogatory intended
22 in that statement.

23 Q I understand that.

24 Now, was there at that time -- could you
25 tell us what occurred subsequent to your telling him that

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2 you would plead guilty to a robbery unit if he would
3 dismiss the other indictments in addition to your
4 pleading guilty to manslaughter in the second degree?

5 A Plus the sentence on the robbery charge
6 was to run concurrent with the manslaughter charge.

7 I says, "I'll have to talk to the defend-
8 ant about it."

9 So I -- before I talked to the defendant
10 about it I spoke to Mrs. Ford, who was sitting in the
11 courtroom, who was the other of the defendant, or the
12 petitioner here, and I tried to explain to her and
13 there was some man who at that time I believed was
14 the brother of the defendant on trial, who is the
15 petitioner here. And I explained the entire situa-
16 tion and that it was only a question of labels,
17 manslaughter 1 and manslaughter 2.

18 Q Let me take you back.

19 Did Mr. Roberts agree to having you
20 plead to manslaughter 2 in addition to the robbery count
21 in full satisfaction of all the indictments?

22 A No. He said, "You must take a plea to
23 manslaughter 1.

24 Q Did you say anything to him relative to
25 that?

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2 A I said I would have to talk to the defend-
3 ant.

4 Q Did you say anything to him relative to
5 your desire to plead to manslaughter 2 and the reasons
6 for that?

7 A Well, I told him that the only reason I
8 wanted to plead guilty to manslaughter 2, because
9 labels meant nothing to me, but it was because the
10 indeterminate sentence on manslaughter 2 was 15
11 years, an indeterminate sentence on manslaughter 1 was
12 a longer period of time. I think it may have been
13 25 years.

14 Q Yes.

15 A And so I then discussed it with the mother --
16 you want me to proceed?

17 Q I wanted you to tell us what, if anything,
18 Mr. Roberts said to you relative to the 15 years.

19 A Well, Mr. Roberts said to me, "Whether he
20 takes the plea -- if he takes the plea for man-
21 slaughter 1 he won't do more than 15 years.

22 Q These were his words to you?

23 A That's right.

24 Q And so what did you then say to him relative
25 to the label of manslaughter 1 as opposed to manslaughter

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3 A Well, I said, "Not in the nature of time
4 off for good behavior or the rules of the Parole Board
5 that he won't do more than 15 years." I says,
6 "I want to be sure that the sentence on manslaughter
7 1 will be the same in the bottom line that would
8 have been the limit on manslaughter 2.

9 Q What did he say to you relative to
10 that?

11 A He said okay on that.

12 Q Did you have a conversation subsequent to
13 that?

14 THE COURT: I don't understand the last
15 bit. I don't understand the last answer, "would be the
16 "bottom line." What do you mean?

17 THE WITNESS: Well, the bottom line .
18 would be the end result. The bottom line would be
19 the end result on the sentence of manslaughter 1.

20 You mean Roberts told you that he wouldn't
21 get any more than 15 years on both and they would run con-
22 currently, is that the bottom line?

23 THE WITNESS: That's the bottom line on
24 both the robbery and the manslaughter.

25 THE COURT: You had been practicing law

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for some time in '69?

THE WITNESS: Oh, yes, for a long time.

THE COURT: You knew Mr. Roberts couldn't promise you that.

THE WITNESS: He mentioned it, and to me, I took it, anything that he said to me, because I had a lot of cases with Mr. Roberts when he was an assistant in New York County.

THE COURT: Mr. Braunstein, in 1969 you were practicing law for how many years?

THE WITNESS: In 1969 I was practicing law 40 years.

THE COURT: Right. And you knew that no district attorney could promise you what any justice of the Supreme Court would do?

THE WITNESS: That's correct. I made mention of that to him too. I says, "You can't promise me anything but it's a question of what recommendation you will make."

THE COURT: Did he promise to make a recommendation?

THE WITNESS: Yes.

THE COURT: All right. I want to make that clear.

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2 THE WITNESS: And I was going to -- I
3 was going to volunteer that, Judge. But he did
4 that through his assistant. His assistant, when we
5 went inside to the robing room with Judge Bloustein --
6 we went through this whole thing after I had spoken to
7 Mr. Ford, Perry Ford --

8 THE COURT: All right. We are getting
9 ahead of the story. I want counsel for Mr. Ford
10 to take you through your conversation with Mr. Ford.

11 MR. MIRSKY: Thank you.

12 BY MR. MIRSKY:

13 Q As to your conversation with Mr. Ford,
14 first of all, did you have a conversation with Mr.
15 Ford subsequent to your conversation with Mr. Roberts?

16 A Right.

17 Q Could you tell us what you said to Mr.
18 Ford?

19 A Well, I told him practically the same thing,
20 repeated the conversation that I had with Mr. Roberts.

21 Q Did you specifically relate to the 15
22 years?

23 A I related to it because he says, "What
24 am I going to get." I remember that specifically
25 because not only all defendants but this defendant says

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"What am I going to get?"

Q What did you say?

A I said, "Fifteen years is what you are going to get."

Q And what did he say to you in response to that?

A Well, he was a little hesitant and he says, "Let me talk to my mother; she's in the courtroom now."

Q Did you indicate to him in addition to the 15 years that the other cases would be dismissed or covered?

A Mr. Mirsky, I told you, I told him the exact conversation. I told him I would volunteer, with his permission, a plea to robbery, one of the robbery indictments, and that I wanted to have an end to all the cases, that the other three cases would be disposed of on the entry of these two pleas.

Q Now, did you also tell him who gave you the understanding that he would get no more than 15 years?

A The understanding -- it was a matter that I had -- it was not an understanding; it was not an agreement like you draw an acceptance and an offer; it was a matter of experience that you have with -- in conver-

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sations by reason of my experience in the practice of law.

Q What did you say to Perry Ford relative to the 15 years?

A I said that there was going to be a recommendation because the district attorney in no event sets the sentence; it's up to the court.

Q Did you inform him of what the district attorney had recommended?

A I informed Mr. Ford what I insisted on and I informed him the response that was made to me by Mr. Roberts.

Q Subsequent to the conversation with Mr. Ford did you then have a conversation with the court?

A Yes. We went back into the robing room. During this conference Mr. Roberts had already left and that conversation was with Mr. Goldsmith, who I assumed was under instructions from Mr. Roberts.

Q Could you tell us what the subject of that conversation was?

A Yes. I might tell you at the outset that this was off the record.

Q I understand that.

A And the subject of the conversation was that

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Mr. Goldsmith opened up and said that "Mr. Braunstein is offering to plead guilty to manslaughter 1 after having insisted on manslaughter 2, and that he volunteered to plead guilty to one of the robbery indictments"; that the sentences on both cases were to run concurrently, and that the other three remaining indictments were to be disposed of on the day of sentence.

Q Was there anything said relative to the 15 years?

A Yes.

Q Could you tell us what was said?

A I want you to understand and I want the record to indicate that all these conversations I was authorized to make by Mr. Ford.

Q I understand that.

Now, could you tell us --

A Subject to his final approval.

Q I understand that.

Could you tell us what was said relative to the 15 years?

A Mr. Goldsmith stated that he would recommend to the court in his statement of recommendation to accept the plea, a time to be served of not more than 15 years.

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2 Q And --

3 A To run concurrent --

4 Q With the robbery plea?

5 A Yes.

6 Q What, if anything, did the court say in
7 response to that, sir?

8 A The court said, "Well, it's up to the pro-
9 bation report, and if the probation report indicates
10 that he is a proper person for this I will not exceed the
11 15 years."

12 Q Did the court say anything to you rela-
13 tive to the district attorney's recommendation?

14 A Well, the judge stated this in the sense
15 of in passing, I would say.

16 Q Please.

17 A I mean by way of our general conversation
18 there.

19 Q Please.

20 A See, you are asking me to say did we have
21 an agreement.

22 Q I am not asking you to say that.

23 A You don't have agreements.

24 Q I am just asking you to tell me what it
25 is that the judge said relative to Mr. Goldsmith's

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recommendation.

A The judge said that he would take it into consideration.

I must correct myself. There is only one judge that I know of in the entire curricula of judges that gave you an agreement and that was Judge Nathan Sobel in Brooklyn. He would write down on the day of adjournment, "Not more than 10 years," "Not more than 15 years," not as to the agreement but so that he could remember what he stated in court.

Q Now, did you go back and have a conversation with Mr. Ford subsequent to your conversation with the judge?

A Yes.

Q And what did you tell Mr. Ford?

A I told Mr. Ford that I think that we are home and I told him that I am going to -- I recommended him to take a plea of first degree manslaughter, that lagels mean nothing so long as the time will not exceed 15 years, and that Mr. Goldsmith was going to recommend no more than 15 years and that the rest of it -- that the three indictments were to be disposed of and that the sentence on robbery was to run concurrent, and I said to him, "You are a very lucky fellow because

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1 jba Braunstein-direct 35
2 you could -- you are facing a lot of time with re-
3 spect to these other two indictments." Because as
4 it turned out the other two defendants from which he
5 was severed were convicted during all this period of
6 time.

7 Q Let me ask you this question: Did you
8 tell him, relative to the 15 years, whether he could
9 expect to get 15 years or not?

10 A Well, that's -- that I can't plumb the
11 judicial mind and the judicial process of a court.

12 Q No --

13 A I told him what the court had stated to me,
14 that it would not be more than 15 years.

15 Q This is what you told --

16 A Provided the probation report authorized
17 or was the basis or the foundation for such a sentence
18 by the court.

19 Q And did you also tell him of the district
20 attorney's recommendation?

21 A I told him the district attorney recommended
22 in the robing room to the court that it would be 15
23 years.

24 Q Did you ever mention to him, sir, in either
25 of these two conversations, whether he could get more

1 than 15 years for the plea to manslaughter in the
2 first degree?

3 A I had no occasion to mention it because
4 these things are delicate things. Judges -- judges
5 don't -- don't give you an iron-bound agreement. You
6 have to rely on the integrity and the faith of the
7 judge, and most judges, I would say 99-3/4 per cent,
8 99-99/100th per cent of the judges live up to what
9 they say, and if a judge said this to me in the course
10 of our conversation, that they would run concurrent,
11 that he wouldn't go back on his word, that he would
12 give him an extra bit, which is a sentence on the
13 robbery case.

14 Q So it would be fair to say, sir, that you
15 never indicated to him that he could receive more than
16 15 years for this plea?

17 A I told you before that my understanding,
18 and what I repeated to Mr. Ford, was that he was not
19 to expect more than 15 years.

20 Q Subsequent to this conversation with Mr.
21 Ford, was it at that time that you then engaged in
22 a plea -- a plea was taken in this case?

23 A It was at that time that I made a complete
24 statement to the court and I usually preface my pleas,
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as the record will indicate, that after a thorough conversation with Mr. Ford and members of his family and after an investigation, which I had made previously of all the cases in connection with my preparation, that the defendant has authorized me to withdraw his plea heretofore entered of not guilty and enter a plea of guilty, and we did it with respect to each indictment-- the indictment with respect to murder and the indictment with respect to robbery.

Q Now, do you recall my calling to your attention the fact that during the course of this plea Mr. Ford indicated that there had been no more than 15 years?

A Yes.

Q Had you had a conversation with Mr. Ford prior to his taking this plea relative to stating that on the record?

A There was -- I had a conversation with him but I didn't relate to him that there was any promise. My statement to him was that there was a statement in the course of our conversation and in the course of the discussion on our plea that there was an indication that Mr. Ford would not get a larger sentence than 15 years.

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Q Let me ask you this sir: Did you say anything to Mr. Ford relative to his mentioning that conversation when he took the plea?

A I said, "In the light of the nature in which my conversation was with the court and the district attorney and in the light of the conversation that I am having with you now, I am not making you any promises or were there any promises stated to you. Therefore, it's customary and there is nothing improper, if a question is posed to you were any promises made to you with respect to the sentence, that you will not be making a misstatement if you say no."

Q This is what you told him prior to his taking the plea?

A That's right.

Q During the course of the plea do you recall any statement which was made by Mr. Goldsmith, either on the record or off the record, relative to his recommendation of 15 years?

A I think at that time he had to state in each case the corpus of the crime because it was an Appellate Division case that overruled the plea of guilty because they failed to state the corpus of the crime and that there was a mention made, that of 15

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2 years with respect to the manslaughter 1 by Mr.
3 Goldsmith, in passing.
4 Q Now, subsequent to the taking of the plea,
5 did there come a time when you came back to court on
6 another day?
7 A Well, there were several proceedings that
8 occurred before Justice Bloustein before the ultimate
9 application.
10 Q I wanted to call your attention to the
11 first such proceeding.
12 Do you remember a proceeding in the
13 latter portion of October of that year, roughly a month
14 subsequent to the plea in which Justice Bloustein
15 referred to a probation report --
16 A Oh, yes, yes, yes.
17 Q Now, do you recall what he said relative to
18 that probation report?
19 A Well, the probation, he stated to him that
20 "I can't sentence you or I can't go on with this be-
21 cause you stated to the probation officer that you
22 were innocent and therefore I can't consider this plea
23 any more."
24 Q Now, did you, sir, subsequent to that
25 proceeding with Justice Bloustein, have an opportunity

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to speak with him in his chambers?

A Yes. We had an adjournment and I made an arrangement to see Judge Bloustein through his secretary and I told Justice Bloustein that my client was -- wanted to withdraw his plea because of the arrest of the girls and certain threats that were made to them, and the judge showed me a newspaper that is issued by the Court of appeals or some agency in connection with the Court of Appeals -- it's not an official publication -- that indicated a case to me, I think the title was People against Beasley, I am not sure --

Q Yes.

A -- where the Court of Appeals affirmed a determination of a refusal of the withdrawal of a plea by a defendant on the grounds that that sufficient grounds were not shown for the withdrawal of the plea.

Q Did he say anything to you during that conversation relative to the promise of 15 years?

A He said that "If your man withdraws his plea, attempts to withdraw his plea, under this decision I am going to deny it, and I have a right to give him a hearing on it under this decision but I am still going to deny it because I don't think there is enough basis for it. And if he presses it I will be com-

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pelled, in the light of the probation report and the light of other things, to add more time on to his 15 years."

Q What did you say to him relative to that?

A I said, "Judge, I don't think that this goes along with the thing that was in my mind and the defendant's mind with respect to taking a plea of manslaughter 1 and the plea of guilty to the robbery indictment and the sentences to run concurrent and with the disposition of the other three cases.

Q And what about the 15 years?

A He said I think I am going to have to add something on.

Q Now, what did you say to him relative to adding more time to the 15 years?

A I says, "Well, I don't think that that was within the purview of the mind of the defendant and myself."

Q What did he say to you relative to that?

A He said, "Well, that's what it's going to be."

I said, "Well, if he makes a motion for the withdrawal of his plea I will have no part of it and I'll remain silent."

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Q Now, subsequent to that the defendant came back to court on two occasions and on both of these occasions the case was adjourned, do you recall that?

A Yes.

Q And finally there was hearing held in the case on February 9th of 1970 in which the defendant testified?

A Yes. I know there was a long adjournment because one of them was on a personal request of mine; I had to go to Florida, which I always did, and I didn't want to miss Florida, so that's why it was adjourned over a certain period of time.

Q Now, at the time of the final hearing in which the defendant testified relative to his desire to withdraw the plea, did you participate in any way in that proceeding?

A No.

Q Was it your position that you desired and wished to remain mute in view of the defendant's desire to withdraw the plea?

A That's correct.

Q And that you did not wish to have any part of it?

A I didn't want to have any part of it because

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1
2 I hoped to have enough health and strength to continue
3 to practice law before Judge Bloustein and other judges
4 of that court and to come up against some of the other
5 district attorneys in that courthouse.

6 Q Now, I take it you recall at the time
7 Judge Bloustein sentencing the defendant to 20 years?
8 Do you recall that?

9 A Yes.

10 Q Subsequent to his testifying?

11 A Well, the defendant took the stand and the
12 defendant -- well, I don't want to go into the colloquy
13 between the defendant and the court at the tail
14 end of which he was sentenced to 20 years.

15 Q Now, prior to the mention of 20 years by
16 the court at the time it imposed sentence in this case
17 had there been any mention made by you or anyone
18 to the defendant relative to the figure of 20 years?

19 A No.

20 MR. MIRSKY: Thank you, sir.

21 THE COURT: Why don't we take a five-
22 minute recess.

23 (Recess.)
24
25

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CROSS EXAMINATION

BY MR. MC KAY:

Q Mr. Braunstein, you testified that Burton Roberts told you that Mr. Ford would do no more than 15 years, is that correct?

A Yes.

Q Now, when he told you this did he promise you that he would do no more than 15 years or did he make any commitment to that effect?

A I don't want to argue with you, but if he made it to me as a promise I would take it with a grain of salt because the district attorney doesn't sentence, doesn't make the promises.

Q So he didn't use the word "promise" or --

A He didn't say it as Mr. Mirsky said, as an agreement; he said in the course of our conversation that the defendant wouldn't do more than 15 years. In fact, if I had pleaded murder 2 I would have insisted no more than 15 years. It wasn't a question of labels, it was a question of time. Like in the civil case it's a question of dollars; in a criminal case it's a question of time.

Q Now, when you went back and talked to Mr. Ford about the conversation with Mr. Roberts involving

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1 the possible time did you tell him that Mr. Roberts
2 recommended or would recommend that he will only serve
3 15 years. How did you couch his statements to Mr.
4 Ford?
5

6 A In the course of my practice of the criminal
7 law I never discuse to a defendant the author by
8 name of any statement. I said that "It's my understand-
9 ing that you won't do more than 15 years."

10 After all, Mr. Roberts had just been made the
11 district attorney of the County of the Bronx and he
12 came up there to do a good job.

13 Q When you told Mr. Ford that he would do no
14 more, in your opinion, than 15 years, did he ask you --

15 MR. MIRSKY: I would object to the
16 attorney general's statement, in his opinion.

17 THE COURT: It was his understanding.

18 MR. MC KAY: His understanding.

19 THE COURT: Correction. Understanding.
20 That was his word.

21 A Would you reput it to me, please.

22 THE COURT: Repeat the question for him,
23 please.

24 MR. MC KAY: Yes, your Honor.

25 Q When you went to Mr. Ford after your conver-

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sation with Mr. Roberts did you tell him that it was your understanding from your conversation with Mr. Roberts that he would do no more than 15 years, is that correct?

A Based upon my entire conversation and all the words and everything that was indulged in the conversation, both with Mr. Goldsmith and Mr. Ford -- and Mr. Roberts, rather. I made that statement to Mr. Ford.

Q When you made that statement to Mr. Ford did he ask you, "Well, what would I get if I went to trial on this charge, if I was convicted of the murder charge"? Did he ask you the sentencing options on the charge that he was being tried for?

A That I don't recall.

Q Did you mention the sentencing options to him?

A I said that if he was, if he went to trial and he were convicted, he was -- he had these other indictments that he was facing but that if he took the plea in this case, that I was led to believe that he wouldn't do more than 15, that the sentence on the robbery would run concurrent with it, and the three other indictments, to use the language they are best familiar with,

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1 would be thrown out.

2 Q Yes, I understand that.

3 But did you tell him or give him any
4 estimation as to time he might serve if he was con-
5 victed of murder?
6

7 A Of murder?

8 Q Yes. That's what he was on trial for.

9 A Well, if he were convicted of the charge that
10 was set forth in the indictment his sentence could
11 have been anywhere from 25 years to life.

12 Q No, I know, but did you tell Mr. Ford that?

13 A Yes, I told him. Mr. Ford, I told Mr.
14 Ford that.

15 Q You told Mr. Ford that he could get a sentence
16 of 25 years to life?

17 A If he were convicted of murder.

18 Q If he was convicted of murder.

19 A Yes.

20 Q Now, you mentioned on direct testimony --
21 correct me if I am not rephrasing this correctly -- that
22 you informed Mr. Ford that two of his co-defendants who
23 were on trial for the murder of Nicholas Chambers, a homi-
24 cide in which Mr. Ford was indicted but severed from --
25 did you inform him that those two co-defendants were

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convicted of that murder charge?

MR. MC KAY: I object, your Honor. That case went to trial subsequent to this case.

THE COURT: Is that true? Did that case go to trial subsequent to this?

THE WITNESS: That case went to trial in the course of our trial because Mr. Goldsmith made an application for a severance because he wanted to get it on, it was a pending indictment, and I remember going from my courtroom to the courtroom where the two girls were trying the other, defending the two defendants. One of them was Natalie Steinbeck and the other one was Mary Lowe, who is now sitting as a Supreme Court judge, and she is an ornament to the bench for a lady.

THE COURT: Was that conviction arrived at in that case before this plea was taken?

THE WITNESS: No. I think it was arrived at a little subsequent to when this plea was taken.

MR. MIRSKY: Perhaps so that the court might have it, I have a copy of the docket sheet relative to that case, which would show that that case commenced trial on December 3, 1969.

THE COURT: All right.

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Braunstein-cross

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MR. MIRSKY: Perhaps we could mark that as an exhibit or the court will accept my recommendation.

THE COURT: It's on the record.

Q Mr. Braunstein, you testified that you had a conversation with Mr. Ford's mother. I believe that occurred the evening before the day that the plea was entered, is that correct?

A No.

Q When did you have the conversation with his mother?

A The same day.

Q The same day?

A Yes.

Q Now, in that conversation with her did you explain the sentencing consequences of the possible plea that would be made as opposed to the sentence that might be imposed if Mr. Ford was convicted?

A Yes. I had that conversation with her in the rear of the courtroom during a recess and I explained to her everything that was germane to the issue of a plea, its consequences and the sentence.

Q Did you mention to her specifically the same statement you told Mr. Ford, that if he was con-

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1 victed of murder he could receive a sence of 25 years
2 to life?
3

4 A Well, this was an elderly woman. I
5 didn't want to shock her too much but I said to her,
6 "You know, he'll get a very long bit if he is convicted
7 of this indictment, of the crime charged in the in-
8 dictment," to sound like a lawyer or a former practicing
9 lawyer.

10 Q Now, it is true that you advised Mr. Ford
11 to plead guilty in the two cases, the manslaughter 1
12 and the robbery 1?

13 A No, I never advise anyone. I only give them
14 the benefit of my opinion, the benefit of my experience.

15 In some cases I make them write down that
16 I want to plead guilty or I don't want to plead guilty.
17 But I advise them and I try to answer their questions.

18 Q Mr. Blaustein, in your opinion, weren't the
19 changes of Mr. Ford being convicted in that trial very
20 good?

21 A If I could answer that question to you I
22 would solve the whole mystery of the criminal law, and
23 that would be the ability to get into the mind of 12 jurors
24 in the jury box.

25 Q I understand that, but in your discussion with

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1 Mr. Ford as to the consequences of being convicted
2 of murder did you relate to him your opinion as to his
3 chances of being convicted?
4

5 A I only told him that there are two pos-
6 sible verdicts: One that you can be found guilty and one
7 you can be acquitted.

8 Q Did Mr. Ford ask you if his chances of
9 being --

10 A If he did I wouldn't give him a flat-footed
11 answer.

12 Q You wouldn't express your opinion as to
13 whether --

14 A I might express an opinion but I would
15 express an opinion with respect to both sides. It's
16 a question of a jury.

17 Q Well, did you express an opinion in this
18 case to Mr. Ford?

19 A I don't think I did. I merely expressed
20 an opinion as to the outcome if there was an adverse
21 determination.

22 Q Well, Mr. Braunstein, you had heard the bulk
23 of the prosecution's case and you still had no
24 opinion, you expressed no opinion to Mr. Ford?

25 A I didn't know at that time that it was the

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1 bulk of the prosecutions case. There were three wit-
2 nesses that were merely identification witnesses that
3 I didn't cross examine. These two witnesses were the
4 first witnesses that had to do with any part of the
5 homicide.
6

7 I didn't know, I didn't sell the District
8 Attorney's office of the County of Bronx short. I
9 didn't know what other witnesses they had.

10 Q Did you think that Mr. Ford was getting a
11 good deal here in entering the plea of guilty to
12 manslaughter 1 on the murder indictment and robbery 1 to
13 cover a seven-count indictment involving assault,
14 reckless endangerment, unlawful imprisonment, and also
15 by pleading guilty to those two crimes that the other
16 indictment on an assault charge, where he was
17 charged with shooting Nathan Goodman, in your opinion was
18 that a good deal?

19 A I thought in my opinion it was an excellent
20 deal, where you can take a plea from a murder indict-
21 ment to a manslaughter 1 with an indication that there
22 would be no more than 15 years, and to include robbery 1
23 to run concurrent, plus a statement from the district
24 attorney that all the outstanding three indictments
25 would be disposed of -- that would be like the season

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coming on now, like a Christmas present.

Q So you did favor the arrangement?

A Pardon.

Q You did favor the deal that was agreed upon by both sides, is that correct?

A Well, any lawyer with any experience wouldn't be worthy of his salt not to favor that kind of a deal because these were most serious crimes.

MR. MC KAY: That's all I have, your Honor.

THE COURT: All right.

MR. MIRSKY: If I might ask a couple of questions.

REDIRECT EXAMINATION

BY MR. MIRSKY:

Q The assistant attorney general just asked you for your opinion of the state of the People's case at the time the plea negotiations began.

You recall his just asking you that?

A You jumbled your words.

Q Do you recall his just asking you about the state of the People's case at the time you took the plea?

A Yes.

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Q Could you tell us what the state of their case was relative to the witnesses that had testified at the time you took the plea?

MR. MC KAY: Your Honor, the witness has already answered this on cross.

MR. MIRSKY: I don't believe he has. The district attorney went into it now.

(Record read.)

MR. MIRSKY: I am asking him about the opinion on cross of the strength of the People's case or the opinion of their case, and I am asking him now.

MR. MC KAY: The witness has already testified on direct as to what the witness said.

THE COURT: Well, not only that but he has also said that he had no opinion with respect to the case.

MR. MIRSKY: I am not sure that is the case. I would like to be able to ask him.

THE COURT: I am sure that's the case.

MR. MIRSKY: May I ask him that?

THE COURT: No.

MR. MIRSKY: I respectfully except.

THE COURT: Mr. Braunstein, when you were

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1 discussing with the defendant here the question of the
2 term to which he might be liable if he were convicted
3 of murder was there any time, either during that
4 discussion or at a later discussion, when he asked
5 you, "Well, what would I get? What," you know, "are
6 the possibilities if I am convicted of manslaughter 1?"
7

8 Now, obviously you know and I know that both
9 manslaughter 1 and manslaughter 2 could be lesser
10 included crimes, right?

11 THE WITNESS: That's right.

12 THE COURT: Didn't he ever inquire of you
13 as to what the maximum was on any of those?

14 THE WITNESS: Yes. He asked me, he
15 said --

16 THE COURT: I am asking you whether he
17 asked you what the maximum was.

18 THE WITNESS: I don't recall, your Honor.
19 I don't recall.

20 THE COURT: I wish you would think about
21 it for a couple of minutes and let me know if you still
22 don't recall.

23 THE WITNESS: He didn't put it to me. I
24 may have put it to him and then a discussion ensued with
25 respect to the maximum and what he was going to get.

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2 THE COURT: In other words, what you are
3 telling me is that it's possible that there was a dis-
4 cussion where he was informed of the maximum?

5 THE WITNESS: That's right.

6 THE COURT: Not only possible but probable?

7 THE WITNESS: Most probable.

8 THE COURT: Most probable?

9 THE WITNESS: Most probable.

10 THE COURT: All right.

11 You may ask, Mr. Mirsky.

12 BY MR. MIRSKY:

13 Q On the judge's referring to the maximum he
14 could get under manslaughter in the first degree.

15 THE COURT: Not only manslaughter first
16 but I said manslaughter second, too, because these
17 are lesser included crimes which a judge would have to
18 charge.

19 Q My question to you would be did you ever tell
20 him that he could expect to get more than 15 years for
21 his plea to either manslaughter in the first degree or
22 manslaughter in the second degree or the robbery indict-
23 ment?

24 A I have to answer you this way: In the long-
25 form indictments of murder, which this was one, it included

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1 a count of manslaughter.

2 Q I understand that.

3 A The robbery indictment was a separate and
4 distinct indictment from the murder indictment. The
5 robbery indictment -- we had a -- I volunteered that
6 on a condition.
7

8 Q I understand that. What was that con-
9 dition?

10 A The condition was that any sentence on it
11 was to run concurrent with the manslaughter.

12 Q I understand.

13 A And the manslaughter 1, it was a question
14 of labels.

15 Q What do you mean by that?

16 A It wasn't a question of labels. If a
17 fellow doesn't have -- in the practice of criminal law
18 I don't know how some lawyers practice criminal law but
19 labels mean nothing. If a fellow has a record, to use
20 the vernacular, as long as my arm, and I take a plea to
21 him of what would appear to be a heinous crime that
22 label doesn't mean anything. It's the end result of
23 what he is going to get.

24 Like I said before, in a criminal case
25 time is important; in a civil case money is important.

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2 Q What did you tell him the end result would
3 be that he would get in this case?

4 A I told him that he could expect, from my
5 discussions, not more than 15 years.

6 Q My question to you is did you ever tell
7 him that he could get more than 15 years to this plea?

8 A I never told him that in such language.

9 Q In any language, did you ever tell him
10 that?

11 A In any language.

12 Q Because I think that was what the court --

13 MR. MIRSKY: Was that what the court was
14 directing its inquiry to?

15 THE COURT: I understand from his testimony
16 that somewhere along the line he had informed him of what
17 the maximum sence would be, not only with respect to
18 murder 1, but also with respect to manslaughter 1.

19 Q Is that the case, sir?

20 A Well, I didn't put it in a comparative
21 area, that way.

22 THE COURT: Not a comparative area, but
23 the question was that I put to you: it was whether
24 you probably iformed him of the maximum on a manslaughter
25 1 or a manslaughter 2.

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THE WITNESS: Yes.

Q What was the maximum that you informed him about?

A The maximum was, to the best of my recollection, the maximum on manslaughter 1 was 15 years and the -- manslaughter 2 was 15 years and manslaughter 1 was up to 25 years.

Q Did you ever discuss with him that he could get up to 25 years for pleading to manslaughter 1?

A When he asked me that question I said, "Forget about it because we have had a discussion of not more than 15 years in this case."

Q Let me just ask one further question.

When you had the first discussion with Mr. Ford relative to this did he appear to be anxious to take a plea in this case?

A This was the first time since I represented Perry Ford that we ever discussed plea. I never made a practice, in the course of my representing defendants as an assigned counsel, of trying to, to use the language of the street, cop out or cop a plea.

They never called me "Cop-a-Plea" Braunstein. I was in a case to try a case.

Q What about Ford; did he ever indicate to

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Braunstein-redirect

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you --

A Never intimated to me anything.

THE COURT: This is repetitious.

MR. MIRSKY: Yes.

THE COURT: Mr. Braunstein, you are
excused. Have a good trip back to California.

THE WITNESS: I hope so.

THE COURT: I am sure you will.

(Witness excused.)

THE COURT: Do you want a short recess?

MR. MIRSKY: No. I would like to
ask one further question.

THE COURT: We have gone over this.

MR. MIRSKY: There is one thing I
haven't mentioned that I would like to get to. If
I could, one question.

THE COURT: No.

You are excused. I have already excused
the witness. We have covered it.

We will take a short recess.

(Recess.)

N O A H B R A U N S T E I N was recalled as a wit-
ness by petitioner and, having been previously
duly sworn, testified further as follows:

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MR. MIRSKY: Your Honor, with the court's permission, Mr. Braunstein has indicated to me --

THE COURT: I want the court reporter to read back his answer to my last question and then I am going to ask him whether that is the truth or not the truth.

MR. MIRSKY: Please. I should indicate to the court that he does have a hearing defect and I think --

THE COURT: He was facing me. He understood my question, believe me.

Read it back.

(Record read.)

THE COURT: I am asking you whether that is a true and correct answer.

THE WITNESS: That answer was not correct nor a truthful answer.

THE COURT: Tell me why it was not.

THE WITNESS: Because I never had the occasion to discuss it with him.

THE COURT: Now, Mr. Braunstein, you had a long-form indictment here.

THE WITNESS: Yes.

THE COURT: And that long-form indictment

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1 incorporated a manslaughter 1 charge as well as a murder
2 charge?

3
4 THE WITNESS: Right.

5 THE COURT: And when you discussed the
6 possibility of the time that he might do under
7 the murder charge are you telling me that at the same time
8 you did not tell him what he might do under the man-
9 slaughter charge?

10 THE WITNESS: I never had any occasion
11 to do that until the time we discussed the plea.

12 THE COURT: Why would that be?

13 THE WITNESS: Because there was no
14 occasion for it. We didn't discuss the time under
15 the major indictment of murder.

16 MR. MIRSKY: Your Honor, I should point out
17 to the court --

18 THE WITNESS: You see, that discussion
19 never came up with him.

20 MR. MIRSKY: It's not a long form. It's
21 a one-count; it's murder, that's it.

22 THE COURT: Well, he told me it was a
23 long-form indictment.

24 THE WITNESS: Well, you know, this is --
25 I can't remember every little detail. I am not trying to

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beg off.

THE COURT: All right. That's it.
Those are the answers.

I won't go any further in this.

MR. MIRSKY: Would you ask him as well
whether he discussed with the defendant what he could
get for murder, because I think both are at issue
here.

THE COURT: He told him.

MR. MIRSKY: He told me that wasn't the
case.

THE COURT: You mean you never discussed
with him what the maximum term was for murder?

THE WITNESS: I may have in the course
of my discussions with him but not at the time --

THE COURT: I am not talking about that
time. I am talking about any time.

THE WITNESS: At any time?

THE COURT: Yes.

THE WITNESS: Yes. I discussed it in con-
nection with the other indictments that were pending
against him.

THE COURT: And not with this indictment?

THE WITNESS: With this indictment or the

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Braunstein

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other indictments?

THE COURT: And the others.

THE WITNESS: And I take into mind, I bear in mind, that today the defendants who are in the jail, whether it is Bronx County or Orange County or New York County, they know, they know sentencing better than some lawyers, most lawyers.

MR. MIRSKY: May I ask, with the court's permission, just so that it is clear, I would like to know whether Mr. Braunstein ever advised this defendant what he could get as a maximum for manslaughter in the first degree. I think that is what has to be clear for the record.

THE COURT: He has told me no.

Am I correct?

DIRECT EXAMINATION

BY MR. MIRSKY:

Q Is that the case, Mr. Braunstein?

THE COURT: Did you ever tell this defendant what the maximum term was that he could get for manslaughter in the first degree?

THE WITNESS: No.

THE COURT: All right.

THE WITNESS: I did tell him that from the

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source of my conversations --

THE COURT: We have been over that before. Your understanding was 15 years.

Yes?

MR. MC KAY: Your Honor, I would like to note for the record my objection to having Mr. Braunstein recalled. I think the record accurately reflected what he stated on direct. And I would also like to note that during the break that we had here, approximately 15 minutes, that Mr. Braunstein was discussing the matter with petitioner's attorney, and I would also like the record to reflect that I am not implying any sort of improper conduct.

MR. MIRSKY: Just so it is clear, he told me that he had never told this petitioner here that he could get up to 25 years for manslaughter. He told me that the only thing that he had told the petitioner was that he could get no more than 15 years. This was his understanding.

BY MR. MIRSKY:

Q Isn't that correct, Mr. Braunstein?

A That's correct. That was our --

THE COURT: All right. This is so repetitious, it's not even funny.

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You are excused, sir. Go back to California.

(Witness excused.)

THE COURT: Call the petitioner.

MR. MIRSKY: Your Honor, as to the petitioner, I wanted to have an opportunity to discuss this case in some --

THE COURT: You have had your opportunity, sir. Today is the day. I am not going to let you make a record.

MR. MIRSKY: Well, if I might, I think I must --

THE COURT: No way. If you want to be held in contempt, you will be held in contempt.

Put the petitioner on the stand, if that's your wish.

MR. MIRSKY: I have a desire to put him on the stand but since I've only had an hour to speak to him yesterday --

THE COURT: You had ample time before. You went to visit him.

MR. MIRSKY: He was upstate.

THE COURT: Please. You went to visit him. Are you going to swear him or not?

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2 MR. MIRSKY: Well, I'll put him on the
3 stand then.

4 P E R R Y F O R D, the petitioner herein,
5 called as a witness, being first duly sworn,
6 testified as follows:

7 THE COURT: Now, Mr. Ford, that mike is
8 on, so you speak into it and everybody will be able to
9 hear you.

10 THE WITNESS: Okay.

11 MR. MIRSKY: Would the court, before I
12 begin questioning Mr. Ford, take judicial notice of the
13 fact that this was a one-count indictment?

14 THE COURT: You have a copy of it. I
15 don't have a copy.

16 MR. MIRSKY: May I give the court this copy
17 and ask the court that the record so reflect.

18 THE COURT: Yes. Fine. We will mark
19 that as Exhibit 3.

20 (Petitioner's Exhibit 3 was received in
21 evidence.)

22 MR. MIRSKY: At this time, your Honor, as
23 Petitioner's Exhibit 4 I would also like to offer in
24 evidence his criminal record which existed at the time of
25 his arrest in this case. It does not include this

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Ford-direct

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case, it does not include the indictment in the
Chambers murder case or the robbery.

THE COURT: Have you seen this, Mr. McKay?

MR. MC KAY: I have seen his yellow sheet,
your Honor.

THE COURT: May I see it, please?

MR. MC KAY: I might add, it does not
reflect his juvenile delinquent record.

MR. MIRSKY: That's correct. I think it
would be a fair statement that that was the extent of
his adult criminal record at the time of his arrest in
this case.

THE COURT: Received.

(Petitioner's Exhibit 4 was received in
evidence.)

DIRECT EXAMINATION

BY MR. MIRSKY:

Q Mr. Ford, I want to call your attention to
September 17, 1969, the day on which you took the plea
in this case.

Would you think back to that day, sir?

A Yes, sir.

THE COURT: Speak into the mike.

Q Now, do you remember Mr. Braunstein coming to

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1 jba Ford-direct 69
2 see you and you having a discussion with him on that
3 day relative to a plea in this case?

4 A Yes, I do.

5 Q Where did he come and see you relative to
6 that?

7 A Up to the bullpen in Bronx County.

8 Q Just so that it is clear, where is the
9 bullpen located?

10 A Above the courtroom.

11 Q Is that a pen for prisoners awaiting trial?

12 A Yes, sir.

13 Q Prior to his coming to see you relative to
14 taking a plea, had you given him any indication that
15 you wished to take a plea in this case?

16 A No, I did not.

17 Q And at the time he came to speak to you had
18 you wished to take a plea in this case?

19 A No, I didn't.

20 Q And when he came to see you could you
21 tell me, sir, what it is that he told you?

22 A He explained to me that the state's case
23 was falling apart, that Mr. Goldsmith was in a rage
24 because the witnesses have recanted their statements
25 and that he felt as though the whole case was shaking,

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1 the whole -- you know, the whole proceeding and what-
2 not. He told me that the best thing I could do was --
3 at that time, was to, you know -- I could get a package,
4 you know, in his terms.

5
6 Q Now, did he explain to you what he meant by
7 the term "package"?

8 A Meaning that I could cop out to manslaughter
9 in the first degree, which had a max of 15 years and the
10 other three charges would be dismissed. This was,
11 you know, like the other three indictments. There
12 was four indictments altogether and three of them
13 would be dismissed and that's it, you know.

14 Q Did he ever indicate to you during the
15 course of any discussion you had with him whatsoever
16 that the plea to manslaughter in the first degree
17 could carry a maximum in excess of 15 years?

18 A No, he didn't, and, if it please the court,
19 I would be willing to take a polygraph test on that.

20 Q Now, at the time he mentioned your pleading
21 to this package did you immediately agree with him to
22 take a plea, or what was your response?

23 A I didn't want to take a plea.

24 Q What did you tell him?

25 A I wanted to finish the trial.

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Q What happened then?

A He said that I stood a chance of blowing it because, you know, in regards to the fact that a lot of them went down, like the witnesses were locked up, they were being badgered on the witness stand, and as the trial minutes will show one of the evidence that they offered at that time was about a letter between the police and the district attorney threatening the witnesses and whatnot, and all this was given and whatnot. I was seeing everything being town down, the witnesses asking for protection from the judge against the district attorney and the police, I guess, and this was denied, you know.

I seen I was being railroaded. I had no choice but to go on or either just accept the time.

Q Now, did you at that point agree with him to take a plea or was there further discussion that you had with him?

A It came another time because I told him I didn't want to take no plea at that time.

Q Did he come to see you a second time?

A Yes, he did.

Q Where was that?

A In the same place, in the bullpen above the

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1
2 court.

3 Q And what did he say to you at that time?

4 A He explained to me that I could get, you know --
5 I can't get no more than 15 years, and he suggested that
6 I takt this here because at that time he told me the
7 witnesses were locked up, you know -- I didn't know this
8 before -- that the district attorney had them locked up
9 for perjury charges and whatnot, and they were nice girls
10 and it iddn't make sense messing up their lives and let-
11 ting them go to a women's penitentiary. He em-
12 phasized about what a women's penitentiary was like.

13 THE COURT: Can we fix the time?

14 Q Was that the same day on the day that he first
15 initiated the conversation with you?

16 A I don't believe it was. I believe it was
17 another day.

18 Q Well, let's just get the time frame correct.

19 Do you recall his coming to you on the morn-
20 ing on which you took the plea?

21 A Yes, he did.

22 Q And discussing with you taking this package?

23 A Right.

24 Q And was it on that morning that you had
25 more than one discussion with him?

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1 jba
2 A I believe they had a recess or something, or
3 some type of a, you know, postponement.

4 Q In the court proceedings?

5 A Yes, and that might have been after that.

6 Q Did he then come up and have a second conver-
7 sation with you?

8 A I believe it was.

9 Q Did he, in the course of the second conversa-
10 tion with you, ever indicate to you that you could
11 receive more than 15 years?

12 A Never.

13 Q For the sentence for plea to manslaughter in
14 the first degree?

15 A Never. I -- my -- all my knowledge was
16 at that time, was that manslaughter in the first degree
17 had a max of 15 years and that was it, you know.

18 Q Where did you get that impression from?

19 A Because he told me. He said that "You
20 couldn't get no more than 15 years; this is all that you
21 can get for this here, is 15 years," you know. "And
22 besides, you got three other charges and if you go to
23 trial the system, of course, they are going to get you
24 on one of them, they are not going to let you get away
25 with four indictments."

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Ford-direct

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Q Did he indicate to you now it was that he came about this package that he could offer to you?

A He said he had a conference with the district attorney.

Q Did he indicate to you whether the judge was present during that conversation?

S He said that the district attorney offered me 15 years, man. 1, and that the judge knew about it, had knowledge of it, you know, so -- but if I go down to court I couldn't tell the judge, like, I was offered anything because that would kill everything. This was the procedure, you know -- like, that you do in court.

Q Was this something that Mr. Braunstein said to you?

A He told me about this here because I had knowledge of it.

Q Was this during the course of the second conversation you had with him on that day?

A Yes, it was.

Q At that time did he indicate to you anything relative to pleading guilty to the robbery?

A No, you see, because I didn't want to plead to that because there was no robbery, but, you

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1 know, that's a matter of law and what it was, I didn't
2 want to implicate nobody in the crime because there
3 was no crime in my eyesight, and the fact that they
4 were putting on the indictment was on something to
5 strengthen the murder indictment.
6

7 Q Do you remember what it was that you first
8 heard about pleading guilty to the robbery?

9 A When they started discussing it in
10 court, when we went down for the plea to manslaughter.

11 Q Did you at that time hear Mr. Braunstein
12 mention anything relative to pleading guilty to the
13 robbery?

14 A I spoke about it, you know, like, in the
15 beginning, I believe, spoke about when he was talking
16 about the conference with the judge, the conference that
17 he had with the district attorney, and the conference he
18 had with my mother and the one that he had with the court,
19 you know. He spoke about that in the beginning
20 I believe.

21 Q And this was at the time he took the plea,
22 is that correct?

23 A Yes.

24 Q Did you and he have a conference during the
25 course of taking of the plea at which time you told him

1 you didn't wish to plead guilty to the robbery charge?

2 A Yes, because, see, I tried to speak before
3 but they kept telling me to be quiet and "Speak to your
4 counsel." This was the judge. He was telling me to
5 shut up and "Speak to your counsel." So the plea, he
6 spoke on it but, you know, like he just -- everybody
7 was telling me just to be quiet, you know, because
8 everybody was talking in the court. The court clerk was
9 getting things confused, the court stenographer was,
10 you know, not knowing whether she was supposed to type
11 or not type because certain signals from the judge.
12 You know, it was a lot of mix-up there.

13 Q Did there come a point during the course of
14 the taking of the plea in which the judge told you of
15 the facts of the robbery case and asked you whether you
16 pled guilty to those facts? Do you know that?

17 A Yes, I remember that.

18 Q Do you recall having at that point a conver-
19 sation with Mr. Braunstein?

20 A Yes, I did. In fact, I got kind of loud
21 in the courtroom.

22 MR. MIRSKY: At this time, your Honor, I
23 intend to offer all of the minutes of the plea and all
24 of the attempts to withdraw the plea into evidence, but
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Ford-direct

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2 just so that we might have this in evidence I would
3 offer the plea minutes.

4 THE COURT: It's in evidence.

5 MR. MIRSKY: I call the court's attention
6 to page 12 of those minutes.

7 THE COURT: All right.

8 Q Now, could you tell me in some detail what
9 it was that you said to Mr. Braunstein relative to the
10 robbery plea?

11 A I told him that I didn't want to plead guilty
12 to no robbery because I didn't commit no robbery.

13 Q What did he say to you at that point?

14 A He told me, see, they had already had --
15 the first, the first, the first thing I pleaded to was
16 manslaughter. This had already, you know, been taken
17 care of, right? So the robbery came after that.
18 He told me I am not -- he told me that -- I told him I
19 wasn't going to plead guilty to robbery. He told me
20 that I might as well because I've incriminated myself
21 as pleading guilty to the murder, the manslaughter, so I had
22 no alternative but to accept it. I didn't want to,
23 though.

24 Q Did he tell you anything relative to
25 what the sentence would be on the robbery?

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Ford-direct

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A He said -- at that time he also said,

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you know, you know, this, "Relax, because it's going to

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run together." You know, "You won't get no more

5

than 15 years, just relax," you know, like that.

6

Q Did he mention the word "concurrent" to you?

7

A Right. He did.

8

Q When you used the word "together," is that

9

what you were making reference to?

10

A Right, together, concurrent, yes, it was.

11

Q Subsequent to the taking of the plea did

12

there come a time when you had an interview with an

13

individual from the Department of Probation?

14

A Yes, I did.

15

Q Can you tell us what happened in that

16

interview?

17

A I had inquired about a Y.O. because I was

18

under 21.

19

Q How old were you at that time?

20

A I believe I had just turned 20. And he

21

told me that I couldn't get no Y.O. because I had --

22

you know, this is a manslaughter, you know, man. I.

23

I say, "Yes, but I am only getting -- I am supposed to

24

get 15 years."

25

He said, "You are supposed to get -- you

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can get 25 years."

Q Who said that to you?

A This is what the probation officer was saying.

I said that I couldn't get no more than 15 years because that's all that was, the max, 15 years for man. 1. And he clarified and said, "You can get 25 years for man. 1 and you can get 25 years for the robbery you pleaded to," and he said, "That could run wild if the judge wanted it to."

When he said "wild," I asked him what he meant. He said it would run behind each other and be 50 years.

Q Was that the first time you heard that you could get up to 25 years for the plea to manslaughter?

A Yes, it was.

Q And up to 25 years for the plea to the robbery?

A Yes, it was.

Q Had anyone at any time prior to that time mentioned to you that you could get up to 25 years for the plea to manslaughter?

A No. I didn't have no knowledge, no court knowledge, at all. I only seen my lawyer one time, as far as a visit, on Rikers Island, and the only other

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1 jba

Ford-direct

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2 time I seen him it would be when I came to court.

3 Q Had you seen your lawyer at any time subse-
4 quent to the taking of the plea and prior to seeing
5 probation after you took the plea and before you saw
6 the probation officer, did you see your lawyer?

7 A I am not certain if he came upstairs or not
8 after that.

9 Q I am talking about at Rikers Island.

10 A I seen him, yes. Only one time on Rikers
11 Island that was before I even went to trial, before it was
12 even set up; only once.

13 Q Was that the only time you saw him?

14 A That's the only time until the trial date.
15 I stepped in the court on trial. You know. That
16 was it.

17 Q Now, what did you tell the probation officer
18 after he informed you that you could get up to 25
19 years for both the robbery and the manslaughter?

20 A He told me I should be lucky. He told me,
21 You should be lucky, you know; you are lucky that you
22 are getting this here."

23 I told him, "Lucky how? I didn't do any-
24 thing anyhow. I am innocent."

25 He said, "Why did you plead guilty?"

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1 I said, "Because I had no choice. They
2 are railroading me out of here." I said, "You know
3 how it is. You be sitting here every day and see the
4 people in the courtroom and you can see what's going
5 on."
6

7 You know. We had a little argument like
8 that.

9 Q When you say railroading to what were you
10 making reference?

11 A To the district attorney badgering the
12 witnesses, locking them up, and when I requested
13 having witnesses brought, you know, in on my behalf and
14 whatnot -- you know, at that time I had witnesses
15 back on stand, you know. I asked for three mistrials,
16 you know. I tried to get a mistrial and they wouldn't
17 give me a mistrial because of what was going on in the
18 courtroom.

19 THE COURT: Don't go any further than
20 this, Mr. Mirsky.

21 MR. MIRSKY: Your Honor, if I might con-
22 tinue on this.

23 Q Did you at any time tell the probation
24 officer you wished to withdraw the plea?

25 A Yes. I told him I was innocent. That's

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Ford-direct

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all. You know. Like that.

Q Now, did there come a time subseautent to seeing the probation officer that you appeared back before Judge Bloustein?

A Yes, there was.

Q And did you indicate or did he indicate to you that he was aware of the fact that you wished to withdraw the plea?

A Yes, he did.

Q And was there any mention of the fact that he would put this case over for a hearing?

A Reluctantly, yes. I think that, yes, he did. But it was reluctantly. Kept telling me to think about it clearly, all this here, considering this was taken after a long time and this, that and the other.

Q Now, did there come a time in which you had a hearing and you testified relative to why you wished to withdraw the plea?

MR. MC KAY: Your Honor, I will object to this line of questioning. I think we are getting away from the issue before the court here.

THE COURT: Yes. I am not going through a Beasley hearing here.

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MR. MIRSKY: I won't suggest that you should but there is something that he said in the Beasley hearing that needs clarification.

THE COURT: Restric it to that.

Q Do you recall testifying at the Beasley hearing?

A Yes, I do.

Q And do you recall telling the court at the Beasley hearing that you had been promised 15 years?

A Yes, I do.

Q And that your lawyer had indicated to you that you could get no more than 15 years?

A Yes, I do.

Q You have seen these minutes of the Beasley hearing subsequently, is that correct?

A Yes, I have.

Q And have you seen the minutes on page -- one of the minutes, and I would call the court's attention to page 8 -- in which the question was posed to you by Mr. Goldsmith, where Mr. Goldsmith said to you:

"Sir, who promised you 15 years?"

And you answered:

"The lawyer said I would get more than 15 years."

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Do you remember reading that?

A Yes, I do.

Q Is that an accurate statement of what you said at that time, sir?

A No. I said the court -- the lawyer said I would get no more, but, you know, there was an error in the record. I explained that in the trial.

MR. MIRSKY: I want to call the court's attention to page 7 of those same minutes in which the defendant indicated that he would get no more than 15 years.

THE COURT: All right.

Q Do you also recall, sir, saying at the Beasley hearing:

"I was pressed into" -- at page 7, your Honor -- "I was pressed into taking a plea by the district attorney and was told that if I did not say that no plea was offered to me that I couldn't come down here and tell anybody"?

A Yes, I do.

Q What did you mean when you said that?

A I was told in the bullpen --

Q By whom?

A By Mr. Braunstein, that when I go downstairs --

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when I appear before the judge I couldn't tell him that a plea was offered to me. All I could tell him is that no plea was offered to me when the question was posed to me, had any plea been offered, had anybody told you that, the judge would be in a position that he was going to do anything like that, you know, the court.

Q When you referred to the term "plea," are you speaking about a promise?

A Right, a promise. No promises were made to me.

Q And in particular what promise was it that you were not supposed to make mention to?

A About the manslaughter.

Q And relative to sentence, were you to say anything regarding that?

A No. I was supposed to, you know, let my lawyer do the talking. Rely on my lawyer.

Q Now, this was something you learned as a result of your conversation with Mr. Braunstein at the time of taking of the plea?

A Right.

Q Mr. Ford, had Mr. Braunstein advised you that you could get up to 25 years for the plea to manslaughter in the first degree would you have taken that

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1 jba

Ford-direct-cross

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2 plea?

3 A No, I wouldn't.

4 MR. MIRSKY: Nothing further, your
5 Honor.

6 THE COURT: Mr. McKay.

7 CROSS EXAMINATION

8 BY MR. MC KAY:

9 Q Mr. Ford, isn't it true that before you
10 entered the courtroom on September 17th, the date when you
11 entered your pleas to manslaughter 1 and robbery 1, that you
12 had already decided to plead guilty before you entered
13 the courtroom?

14 A On which date?

15 Q September 17th, the date when you entered
16 you pleas.

17 A No, I hadn't already decided it.

18 Q You hadn't decided before you walked into
19 the courtroom?

20 A Only upstairs. Well, since you said I
21 was thinking about the court building, but upstairs, when
22 this was decided between Mr. Braunstein, you know, I
23 guess you would say yes, I did.

24 Q Did the assistant D.A., Mr. Goldsmith, or Judge
25 Bloustein ever make any promises or commitments to you

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1 with reference to what sentences would either be
2 recommended or imposed?

3
4 A No, sir.

5 Q Did Mr. Braunstein make any promises or
6 commitments to you as to what you would receive on your
7 plea to manslaughter 1 and robbery 1?

8 A Yes, he did. He told me I would get no more
9 than 15 years; I couldn't get no more.

10 Q When he said that you wouldn't get any
11 more than 15 years did he say that "I can assure you
12 you won't get any more than 15 years, I promise you
13 that youi won't get any more," or was he just saying, "In
14 my opinion"? Was he expressing his opinion?

15 A No. It wasn't put in an opinion-type
16 manner. You know, like he is not a type of man. He
17 said he had a conference with the district attorney and,
18 you know, they reached an agreement and I would get no
19 more than 15 years for the max, that's the max of man. --
20 this is what I believe to be a max because he told me I
21 couldn't get no more than 15 years.

22 Q Did Mr. Braunstein tell you that the
23 assistant D.A. or Judge Bloustein promised him that
24 they would give you no more than 15 years?

25 A He told me that the district attorney said

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1 that I would get no more than 15 years and that the
2 judge knew about it. This is what Mr. Blaustein told
3 me. The judge had knowledge of it. Not that he
4 was participating bu' he had knowledge of it. I
5 figured he was down with everything, you know.
6

7 Q Do you recall Mr. Braunstein telling you
8 that if you were convicted at your trial of murder that
9 you could receive a sentence of 25 years to life?

10 A He never told me that and I am willing to
11 take a lie de- -- a polygraph test on that, if the
12 court wants. He never told me anything like that.

13 Q Am I correct in saying that Mr. Braunstein,
14 either on the manslaughter plea or the robbery plea,
15 never informed you of any consequences, of the sentencing
16 consequences, of your plea?

17 MR. MIRSKY: I object, your Honor. I
18 don't think that is a proper question.

19 THE COURT: No. Sustain the objection.

20 Q At the time you entered your pleas of guilty
21 did you know that those two pleas were covering all the
22 outstanding indictments against you at that time,
23 including the assault charge and the seven-count indict-
24 ment involving robbery and reckless endangerment, un-
25 lawful imprisonment, and also the indictment of the murder
 of Nicholas Chambers; did you realize that at the time

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jba Ford-cross

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that you entered the plea?

A When I entered the plea I was informed that I was only pleading to or that I would be only pleading to manslaughter in the first degree and that's all. And that the robbery, the other pending indictments from homicide and the felonious assault on Nathan Goodman would be dismissed and this is what I was led to believe all the way through to the end as in the minutes it will show. And then Mr. Goldsmith said, you know, somewhere near that, "We don't dispose of them any more. We have our way of dealing with them."

Q But it was your impression at the time you entered your pleas that these other charges would either be dismissed or disposed of?

A Yes, it was. I never, you see, didn't think, I didn't want to be -- I didn't want to be severed from the other manslaughter charge. See, I didn't know I was being severed from that charge. What happened is I was severed and my name was added to a list of witnesses, state witnesses, against Larry Johnson, which is my co-defendant in those cases, and the other people involved.

Q You are referring to the murder indictment of Nicholas Chambers?

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Ford-cross

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A Right. My name was put up as a witness for the state, and I had no knowledge of it.

Q You had no knowledge you were indicted?

A I had no knowledge that my name was being used, I was being severed from that case to be added to a witness list. They put my name as a witness on that. You know, in other words, they have a list of witnesses for the state, you know, and this is what they gave to their lawyers -- that I was a witness against them. This is what the district attorney, you know, was doing. I didn't know I was being severed from that case.

Q Were you aware of the testimony of Linda West at the murder trial of Nicholas Chambers?

MR. MIRSKY: I object as to the relevancy of this in view of the fact that that trial occurred subsequent to this case and the taking of the plea.

THE COURT: Yes.

Q Mr. Ford, isn't it a fact that you discussed the possibility of entering a plea with your mother on several occasions?

A My mother informed me that she spoke to the judge and I was surprised that she --

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Ford-cross

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Q She spoke to the judge or the assistant?

A She spoke to the judge. She told me she spoke to the judge and that she had asked the judge that Mr. Braunstein be removed as my counsel. The judge told her no. She told me that she gave him money. I don't know. She just told me this, see? This is when I was upstate just before she died, you know.

She told me that she asked that he be taken off as my counsel, you know, and the judge told her no, you know. You know, this is the proceedings, this is his courtroom, he is going to do what he wanted to do, you know, like that, and that was it.

Q What I am getting at is, are you aware of the fact that your mother spoke with Mr. Braunstein, your attorney?

MR. MIRSKY: At what time, just so that we have the time?

Q Before the evening, the evening before or the evening before your plea or the day of your pleas.

MR. MIRSKY: I don't think there is any testimony to that effect, your Honor.

MR. MC KAY: I think there is. Mr. Braunstein testified to that.

THE COURT: Didn't Mr. Braunstein?

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Ford-cross

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THE WITNESS: Yes, he, in the beginning --

MR. MIRSKY: I don't think he talked about
the evening before.

THE COURT: No. He said that he
talked to him the day of it.

MR. MIRSKY: The day of --

Q You are aware of that fact?

A Right. Because he said that at the bar --
you know -- in front of the judge.

Q Did your mother relay any of her conver-
sations with Mr. Braunstein concerning your sentencing
possibilities if you were convicted of murder?

MR. MIRSKY: Your Honor, I have to object.

THE COURT: I don't know what you mean,
"relay."

MR. MC KAY: Well, your Honor, Mr. Braun-
stein has testified that he spoke with Mr. Ford's
mother and that he did discuss the plea with her and it
is very possible that he might have told her what the
sentencing possibilities were and that she related it --

THE COURT: Ask him that. Don't ask him
did she relay. Ask him specifically.

What did your mother tell you, if you
talked to her after she talked to Braunstein?

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Ford-cross

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THE WITNESS: She didn't say anything about that time, anything about any time. She just said she spoke with him and she wanted to let me know. You see, I had a son. She was telling me about my son and that's what it was basically about. I had just had a son born at that time. And she said, you know, like, "Do what you think is best." Just, you know, "I am going to be with you," you know, "through the whole thing, no matter what." Like that.

Q Mr. Ford, before your arrest for the crimes involved here, namely, for the two murders, the assault and the robbery, had you been arrested before?

A I was arrested on felonious assault, I was arrested on it and it was dismissed in the criminal court, and that's the only thing, you know, like, as far as the criminal court like that, but I have a juvenile record, you know, like fighting teachers and stuff like that.

Q Did you ever serve any time in a state institution for --

A They tricked me. They sent me to --

MR. MIRSKY: I have to ask relative to what. A criminal court case?

MR. MC KAY: Juvenile delinquency adjudica-

tion.

A They tricked me into going to jail. I mean going to, you know -- going along with -- going to a training school. They told me --

Q Then you did go to a training school?

MR. MIRSKY: I would ask that he be able to answer the question, your Honor, without interruption?

A Yes, I was.

Q How long were you there for?

A About, say -- about maybe 18 -- about two years, probably, or more. This was -- I know it was a long time.

Q When you were arrested for the murder of Mr. Quintana did you make bail?

A No. Well, see, what happened is they locked us up for -- because we were at someone else's house and when the officers came they had no warrant they snatched some -- they said they found some guns, something to that effect, some guns, of course, had been found and the judge in criminal court said that he was going to throw the case out, you know, the next time. He gave us a date to come back and said that he was going to throw the case out, because it was somebody else's house and there was no guns produced.

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Ford-cross

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So now when they did, they said -- they brought me back before his scheduled date for me to come back in front of another judge, who gave me a date beyond his date, so I never came back to the court when I was supposed to come before him and I came before another judge, you know, and he kept postponing until they got the indictments down.

MR. MC KAY: Your Honor, I would ask that that answer be stricken as unresponsive.

THE COURT: I am surprised that counsel for the petitioner doesn't ask that the question be stricken because it is completely irrelevant to the issues that we have here.

MR. MIRSKY: I didn't see the relevance of it.

THE COURT: We can go on all day and night in this.

MR. MC KAY: It's relevant in the sense that if he was confined this whole time, it's very possible that he could have discussed the crimes and sentencing possibilities with other inmates in the --

THE WITNESS: Well, in that case I would --

THE COURT: Did you make bail or not?

THE WITNESS: No. I was locked up all the

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2 time.

3 MR. MIRSKY: I would ask that he be asked the
4 question then, if that's the nature of the inquiry.

5 THE COURT: Did you discuss the maximum
6 sentence for the crime of murder with anybody?

7 THE WITNESS: No, not with anybody at all.

8 THE COURT: Did you discuss the question
9 of the maximum sentence for manslaughter with anyone?

10 THE WITNESS: No, I didn't.

11 MR. MC KAY: That's all I have, your
12 Honor.

13 THE COURT: Mr. Mirsky?

14 REDIRECT EXAMINATION

15 BY MR. MIRSKY:

16 Q Just so that it is clear, do you recall when
17 it was that you were arrested in this case and incarcerated?

18 A I was arrested in the latter part of De-
19 cember, 1968.

20 Q And was it at that time that you remained in
21 jail pending the trial in September of 1969?

22 A All the way up until this day.

23 Q Do you recall making a statement to Judge
24 Bloustein when he resentenced you to Elmira, which went
25 as follows, where the court asked you whether you wanted

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to go to trial on the cases involving Nicholas Chambers' death and the Van Hook robbery case and the Goodman assault case, the other cases which had been covered by the plea in this case?

Do you recall the judge asking you that?

A Yes.

Q And do you recall what your response to him was?

A Yes.

Q What was your response?

A I wanted to go to trial on everything. It was my life and if I blew it, you know, I blew it.

MR. MIRSKY: I would call the court's attention to the hearing minutes on the resentencing of February 11, 1970, in which he was sentenced to Elmira as opposed to Ossining, which was the place of the original sentence.

THE COURT: The original sentence was what, 10-20?

MR. MIRSKY: An indeterminate term not to exceed 20 years.

THE COURT: What was the resentence?

MR. MIRSKY: The same thing, but to Elmira, because he was under age 21 and could not

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2 go to Ossining.

3 Q Do you recall saying to the judge at the
4 time of the original sentence -- and I would call the
5 court's attention to page 14 of that -- "I am ready to
6 go to trial on everything"?

7 A Yes, I did.

8 Q And what were you making reference to there,
9 sir?

10 A To all the cases. I was trying to get,
11 you know, my plea back because of the circumstances
12 that was involved with me taking the plea.

13 MR. MIRSKY: Nothing further.

14 MR. MC KAY: No questions, your Honor.

15 THE COURT: All right, the petitioner is
16 remanded.

17 Have you got your writ?

18 I'll reserve decision.

19 MR. MIRSKY: With the court's permission,
20 we wanted to submit to the court a brief relative to
21 these proceedings and in support of the petitioner's
22 claim. Understandably, he proceeded pro se in this
23 case and I held in abeyance the final completion of the
24 brief pending the testimony in this case so that I can
25 address myself to it as it would appear, and now

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that that is the case I would ask to have leave to submit
a brief on this.

THE COURT: All right.

MR. MIRSKY: I would also ask the court
whether the court would deem it of importance for me to
order the minutes of the trial proceeding prior to the plea,
which minutes we don't have at this time.

THE COURT: I really don't think so.
At the end of this hearing I don't think that they
are going to in any way affect my determination here.

MR. MIRSKY: Just so that that is clear
then, relying on that representation, I won't order those
minutes in view of the court's feeling that it is not
relevant to your determination here.

THE COURT: Right.

Now, when are you going to get a brief to
me? The first week in January.

MR. MIRSKY: Sure.

MR. MC KAY: I would like to reserve the
opportunity to reply to it.

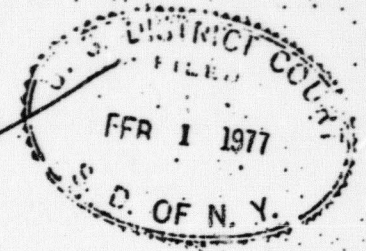
THE COURT: He has until the first week in
January. Let's pick a date. January 7th, and you
have until the 14th to reply.

MR. MC KAY: Thank you, your Honor.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Copy



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PERRY FORD,

Plaintiff,

- against -

JACK R. CZARNETSKY, Superintendent
Eastern New York Correctional Facility,

Defendant.
-----x

OPINION

76 Civ. 2245 (HFW)

45576

APPEARANCES: (See last page)

HENRY F. WERKER, D. J.

This is a petition for a writ of habeas corpus based upon a charge that the petitioner did not render his plea of guilty knowingly and voluntarily. Counsel¹ was appointed to represent petitioner and a hearing was conducted before this court on December 17, 1976 at which petitioner and counsel who had represented petitioner each testified. Petitioner has exhausted his remedies in the state courts.

The petitioner pled guilty to a charge of manslaughter in the first degree and robbery in the first degree in the Supreme Court, Bronx County, on the 17th day of September 1969.

He was represented by appointed counsel, one Noah L. Braunstein, at the time of these pleas. The petitioner had been arrested in December, 1968 as a result of charges against him contained in four separate indictments, numbers 186, 187, 188, 189, filed in Bronx County, two of which charged petitioner with murder, one with robbery in the first degree, and one with assault. The petitioner was brought to trial on one of the murder indictments, a charge of murder in the first degree of one Ronald Quintana. The only two witnesses connecting him to the

crime, Bernadette Combs and Judy Ringer, apparently recanted upon cross-examination by petitioner's counsel following which the Assistant District Attorney had them arrested for perjury. During a recess in the trial petitioner's counsel and the District Attorney negotiated an arrangement whereby if the petitioner pled guilty to a charge of manslaughter in the first degree and robbery in the first degree, the indictments accusing him of murder, assault and robbery were dismissed. The District Attorney also indicted that he would recommend more than 15 years on each charge to be served concurrently. Counsel discussed this offer with petitioner because he considered it "like Christmas." Petitioner apparently was not anxious to plead but nevertheless authorized his counsel to accept the offer because he was concerned for the welfare of the female witnesses who had been arrested after they recanted.

The petitioner pled guilty to the crimes charged. At the time of sentencing he asked to withdraw his pleas on the ground that they were not voluntary and that he was not guilty. This position had been developed during an interview with a probation officer during which petitioner stated that he was not guilty. A Beasley² hearing was held to determine whether the petitioner understood the nature and consequences of his plea or whether he should be permitted to withdraw his plea. The trial judge concluded that the pleas had been knowingly and voluntarily made and denied petitioner's motion to withdraw his plea. The court had concluded that the petitioner had had ample opportunity to consult with his counsel, had been questioned by the court at the taking of the plea and had given answers indicating that the pleas of guilty were knowingly and voluntarily made, and that petitioner had had the benefit of hearing substantially all of the people's case. During the course of the hearing petitioner was also denied the right to call the two female witnesses upon whose plight he relied to prove that the plea

was not voluntary. Petitioner was sentenced to an indeterminate term of twenty years.

At no time during the proceedings was petitioner informed of the minimum and maximum term for manslaughter in the first degree or of robbery in the first degree. Neither his counsel, any other inmate nor the court informed him of this vital piece of information. ³ The District Attorney recommended fifteen years. No promise other than that recommendation was made.

Petitioner's prior criminal record consists of one arrest for an assault and weapons offense on October 7, 1968. Although he might be said judging from his testimony to have been a "street-wise" youngster he cannot be charged with knowledge of the penalties for the varying degrees of crime set out in the New York Penal Law. Every guilty plea is to some extent coerced by the motivation of the pleader, and I do not find that this plea was involuntary. However, unlike Kelleher v. Henderson, 531 F.2d 78 (2d Cir. 1976), this case does not lend itself to a conclusion that whatever the penalty the likelihood of conviction was such that the petitioner felt that the guilty verdict was a certainty and a harsher penalty sure to be imposed. This Circuit has indicated clearly that a failure to advise a defendant of the minimum and maximum term of imprisonment is fatal to the constitutional requirement that a plea be knowingly made. I find that this petitioner did not know and was not advised of the consequences of his plea. I find in addition that the petitioner was entitled to call witnesses at the Beasley hearing for the purpose of attempting to show that the criminal process was being abused by accusing witnesses of perjury during the course of his trial.

These are the findings of fact and conclusions of law required by Rule 52, Fed. R. Civ. P. The plea and sentence are hereby vacated and the petitioner is remanded to the Supreme Court of the State of New York, County of Bronx, with

the further direction that unless trial of the petitioner takes place within 120 days, the indictment is to be dismissed. The petition to the extent indicated is granted.

SO ORDERED.

DATED: New York, New York
January 27, 1977

Henry J. Walker
U. S. D. J.

NOTES

1. The Court appointed Chester L. Mirsky, Esq. counsel to the petitioner on the 6th day of October, 1976. The return date or hearing was adjourned from time to time after the court made arrangements for counsel to interview petitioner at the New York Correctional facility at Napanoch, New York. Counsel protested that he had no opportunity to further interview petitioner at the time of hearing. This was nonsense. Counsel should be advised that he must make time to interview petitioners of this type wherever they are since his expenses are paid by the United States. Appointments of this kind are not to be treated at Counsel's convenience but must be handled with a preference. If that cannot be done Counsel should withdraw his name from the C.J.A. list.
2. People v. Beasley, 25 N.Y.2d 483, 307 N.Y.S.2d 39, 255 N.E.2d 239 (1969).
3. Noah L. Braunstein, Esq. is now retired and residing in California. He was brought to New York to testify at the hearing. He appeared to be an experienced criminal defense lawyer. Although his memory was somewhat faulty he was ultimately definite about his failure to inform the petitioner of the maximum term to the crime of manslaughter in the first degree or robbery in the first degree.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

Ghislaine Salomon

being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, the Attorney for Respondent herein. On the 17th day of February, 1977, she served the annexed upon the following named persons:

CHESTER L. MIRSKY, ESQ.
80 Fifth Avenue
Suite 1502
New York, New York 10011

Attorney in the within entitled proceeding by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at TWO WORLD TRADE CENTER NEW YORK, N.Y. 10047 directed to said Attorney at the address within the State designated by him for that purpose.

Sworn to before me this 17th day of February, 1977
Kenneth M. Ray
Assistant Attorney General of the State of New York

Ghislaine Salomon

MAR 8 1977

76 Civ. 2245 (HFN)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PERRY FORD,

Petitioner,

-against-

JACK R. CZARNETZKY, Superintendent, Eastern New York Correctional Facility,

Respondent.

NOTICE OF MOTION AND
AFFIDAVIT IN SUPPORT OF
MOTION FOR STAY OF JUDGMENT

LOUIS J. LEFKOWITZ,

Attorney General

Respondent

Office And Post Office Address

Capitol, Albany, N.Y. 12224

New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047
Tel. 488-7410

Personal service of a copy of

within

is admitted this day of

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STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

MAGDALINE SWEENEY , being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, attorney for Respondent-Appellant herein. On the 15th day of April , 1977, she served the annexed upon the following named person :

Chester L. Mirsky, Esq.
80 Fifth Avenue, Suite 1502
New York, New York 10011

Attorney in the within entitled appeal by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by for that purpose.

Magdaline Sweeney

Sworn to before me this
15th day of April , 1977

Kevin J. McLaughlin
Assistant Attorney General
of the State of New York